

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 DALLAS DIVISION

4 UNITED STATES OF AMERICA (NUMBER 3: 04-240-G
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7 HOLY LAND FOUNDATION, ET AL. (September 18, 2007
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10 VOLUME 31
11 TRANSCRIPT OF THE TRIAL
12 BEFORE THE HONORABLE A. JOE FISH
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13 A P P E A R A N C E S :

14 For the Government: MR. JIM JACKS
15 MR. BARRY JONAS
16 MS. ELIZABETH SHAPIRO
17 MR. NATHAN GARRETT
18 Assistant United States Attorney
19 UNITED STATES DEPARTMENT OF JUSTICE
20 NORTHERN DISTRICT OF TEXAS
21 U.S. Courthouse
22 1100 Commerce Street
23 Dallas, Texas 75242
24 214/659-8600

21 For the Defendant Shukri Baker:

22 MS. NANCY HOLLANDER
23 MS. TERESA DUNCAN
24 FREEDMAN BOYD DANIELS
25 HOLLANDER
20 First Plaza, Suite 700
Albuquerque, NM 87102
505/842-9960

1 For the Defendant El-Mezain:

2
3 MR. JOSHUA DRATEL
4 MR. AARON J. MYSLIWIEC
5 LAW OFFICE OF JOSHUA L. DRATEL
6 14 Wall Street, 28th Floor
7 New York, NY 10005
8 212/732-0707

9 For the Defendant Mufid Abdulqader:

10 MS. MARLO CADEDDU
11 LAW OFFICE OF MARLO P. CADEDDU
12 3232 McKinney Avenue, Suite 700
13 Dallas, Texas 75204
14 214/744-3015

15 For the Defendant Elashi:

16 MS. LINDA MORENO
17 LAW OFFICE OF LINDA MORENO
18 PO BOX 10985
19 Tampa, Florida 33679
20 813-247-4500

21 MR. JOHN D. CLINE
22 Jones Day
23 555 California St
24 26th Floor
25 San Francisco, CA 94104-1500
415/875-5812

1 For the Defendant Odeh:

2
3 MR. GREG WESTFALL
4 WESTFALL PLATT CUTRER
5 Mallick Tower
6 One Summit Avenue, Suite 910
7 Fort Worth, Texas 76102
8 817/877-1700
9

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Court Reporter: Cassidi L. Casey, CSR No. 1703
1100 Commerce Street, Rm 15D6L
Dallas, Texas 75242
214-254-3139

1 P R O C E E D I N G S:

2 THE COURT: Good morning, Ladies and Gentlemen. I was
3 told counsel wanted to see me before we bring the jury in.

4 MR. WESTFALL: We probably want to see you on different
5 things. The order of the arguments today is going to be Josh
6 Dratel and then Marlo Cadeddu and then me, and I have spoken with
7 Mr. Garrett about this. One alternative which we thought of
8 which would be helpful for me personally but also the jury might
9 appreciate it is to have the two arguments and then have an early
10 lunch, and I will argue for forty-five minutes after lunch, and
11 if that's okay with the Court -- And Mr. Garrett has no objection
12 to that. That's what we would like to do.

13 THE COURT: All right.

14 MR. WESTFALL: Thank you, your Honor.

15 THE COURT: Mr. Garrett.

16 MR. GARRETT: Your Honor, I wanted to touch base on
17 these instructions. I have before me a copy this morning of what
18 will be filed as the government's supplemental jury instructions,
19 and Mr. Jacks and I worked on it late last night in consultation
20 with Mr. Cline. Where we're at right now are the only counts
21 that will be affected are Counts 2 through 10, and I talked to
22 Mr. Cline both last night and this morning. This is not going to
23 affect anyone's argument. In short or summary, you can see that
24 what the government is suggesting is removing Count 2 -- which is
25 the government's belief that's the theory of the case as opposed

1 to an element -- adding a knowledge of sending support to HAMAS
2 in the first element and then some modification of the definition
3 of providing material support to HAMAS consistent with your
4 Honor's language about control or direction.

5 But in any event, I think that Mr. Cline -- I'll let
6 him speak for himself, but he may file some response to this this
7 afternoon, but again I don't think it's going to affect what's
8 happening today.

9 MR. CLINE: Your Honor, we did work on this late into
10 the night, both sides. This proposal here, I received this
11 morning from Mr. Garrett. What I would suggest is we're going to
12 finish today, as I understand it, after Mr. Westfall's argument.
13 Both Ms. Moreno and Mr. Garrett can argue tomorrow. As soon as
14 we are done with Court today, I will go back and prepare a quick
15 response, and it will be just a couple of pages, and we should be
16 squared away on this issue if that's acceptable to the Court, and
17 I will have it in no later than 4:30 or 5:00, and the changes
18 contemplated are pretty minor in terms of moving words around on
19 the page -- significant in terms of the charge, and I don't think
20 it will take long for the Court to implement it.

21 THE COURT: Thank you.

22 (Jury in)

23 THE COURT: Good morning, Ladies and Gentlemen. Before
24 we get started today, I wanted to give you an overview of what to
25 expect today. We will begin this morning by hearing from Mr.

1 Dratel, counsel for Mr. El-Mezain, and then following Mr. Dratel,
2 we will hear from Ms. Cadeddu, counsel for Mr. Mufid Abdulqader.
3 And then we will take our lunch recess, and when we come back
4 from lunch, we will hear from Mr. Westfall, counsel for Mr. Odeh.
5 And then that will conclude our session today. So we will
6 probably be recessing sometime early this afternoon, and I wanted
7 to let you know that so that you can make your personal plans
8 accordingly. Mr. Dratel.

9 MR. DRATEL: Please the Court.

10 THE COURT: Yes, sir.

11 MR. DRATEL: Good morning Ladies and Gentlemen of the
12 jury. I want to thank you for your dedication and your attention
13 during the course of this trial. While it may have been shorter
14 than initially anticipated, it was not short by any means. My
15 time is limited, and it's budgeted. So I can't cover everything
16 that I might cover with unlimited time. The trial is too long to
17 cover everything. I will cover what I consider highlights and
18 important matters and certain themes that I think are important
19 from the evidence -- and from the evidence itself.

20 Also, Mr. Garrett, for the government will get another
21 opportunity to speak to you, and I won't. So I have to
22 anticipate some arguments that he may make but he may not make.
23 So I have to cover those matters, even though Mr. Jonas may not
24 have. I will talk more about that later, about certain aspects
25 of the case.

1 When Mr. Jacks opened back in July for the government,
2 he said there were two important questions in this case. First
3 was whether these Zakat Committees and other foundations who were
4 the recipients of money from the Holy Land Foundation were
5 organizations controlled by, affiliated with or operated for the
6 benefit of HAMAS. He said the second question was did the
7 defendants know that. As the Court's instruction will tell you,
8 the government has to prove a yes answer to both questions beyond
9 a reasonable doubt. And there are two instructions I would like
10 to point out to you in making that evaluation, just above and
11 beyond the others. But all of them are important.

12 First is reasonable doubt itself. Ms. Hollander read
13 it to you yesterday, but I think it's important enough that it
14 should be read again. "A reasonable doubt is a doubt based on
15 reason and common sense. After careful and impartial
16 consideration of the facts in the case, reasonable doubt is
17 proof so convincing that you would not hesitate to act on it in
18 the most important of your own affairs."

19 And the question control, what does it mean for HAMAS
20 to control a Zakat Committee? "You may find that an entity was
21 controlled by HAMAS if you find that the entity was operated
22 under HAMAS's direction, or organizing, managing or supervising
23 or otherwise directing HAMAS's persons or resources."

24 And as the evidence demonstrates -- and I will go in
25 more detail -- the government has not proved that control,

1 certainly not beyond a reasonable doubt. But in light of those
2 questions that Mr. Jacks asked, in light of those instructions,
3 in light of the evidence, it's not surprising that Mr. Jonas
4 yesterday spent the first two and a half hours of his summation
5 on a variety of other topics before getting to what he conceded
6 was what this case is all about, the Zakat Committees.

7 What the government resorts to and spends valuable time
8 during summation and what it spends time during the case is also
9 important in terms of when you try to evaluate the strength of
10 its case and what its case is all about. I'll talk about that
11 material throughout my summation. So you have to ask yourself
12 what's been put in evidence regarding Mr. El-Mezain's knowing
13 support for Zakat Committees controlled by or operated for the
14 benefit of HAMAS. I urge you to look at the evidence carefully.
15 Look at it carefully. You will find the government has not met
16 its burden, that Mr. El-Mezain is not guilty of each and every
17 count charged against him in this indictment.

18 The charges are basically the same. In a certain
19 sense, they all charge the relationship to HAMAS. The money
20 laundering counts have as a predicate the illegal activity
21 charged in the first two sets of counts which is the material
22 support and the violation of the President's Executive Order
23 blocking all transactions with HAMAS.

24 But I want to point out again another instruction of
25 the Court that you will hear which is about the indictment itself

1 which you will have with you when you go back to the juryroom.
2 The indictment is simply a description of the charges made by the
3 government against the defendants. It is not evidence of the
4 defendants' guilt. So you must look at it with that limitation.

5 I'm not going to wait as long as Mr. Jonas to get to
6 the heart of the case, the Zakat Committees. Since it's the most
7 important part of the case, let's go to it right now.

8 The government's case cannot survive an analysis of the
9 Zakat Committees. I'll touch upon other aspects of the case and
10 the evidence that re-enforces that conclusion that Mr. El-Mezain
11 is not guilty, that you must find him not guilty of the charges
12 against him. But first, I want to get to the heart. You heard
13 from Dr. Nathan Brown. He's a professor as well, but he has his
14 doctorate. And Mr. Abington, a career diplomate for the United
15 States Government. You heard them testify about the nature of
16 the Zakat Committees -- and in particular the Zakat Committees in
17 this case -- and why they are not part of HAMAS, why they are not
18 controlled by HAMAS. And there are several factors that go to
19 that conclusion. They are all licensed. We put those licenses
20 in evidence through Dr. Brown. Those are Exhibits 1040 and 1167,
21 and I will go through those in more detail later on. Those were
22 1997, those registration certificates, part of the time period in
23 this case. The Palestinian Authority, the enemy of HAMAS,
24 licensed all of them.

25 There was some evidence that some may have been closed

1 during the 90's, but Mr. Abington testified the closures included
2 more than HAMAS charities, and in a sense they were political
3 closures by the Palestinian Authority. There was an article that
4 was referred to in the cross of Dr. Brown, but I actually brought
5 it up in the cross of Mr. Avi in my cross examination which
6 proves the Palestinian Authority in 1995 and 1996 decided to pay
7 greater attention to the Zakat Committees and whether they were
8 controlled by HAMAS. And that's where the licensing comes in.
9 As Dr. Brown said, by the Ministry of Wakf, after the intifada in
10 1987, then you have licensing procedures. But that article in my
11 cross examination of Mr. Avi established the Palestinian
12 Authority said we have to make sure these boards are within our
13 control, that these organizations, these Zakat Committees, are
14 within our control. So we will audit them, monitor them, and we
15 will license them.

16 Licensed by the Ministry of Wakf which appoints the
17 director, Mr. Brown told you, approves the directors, as
18 Dr. Brown told you. They issue regular financial reports to the
19 Ministry. As Dr. Brown told you, quasi-governmental
20 organizations.

21 Now, you have seen the correspondence, and we will look
22 at some more of these organizations. The PA logo, the eagle, on
23 the correspondence for many of these committees to show that they
24 are quasi-governmental, that they are licensed, to show the
25 people dealing with them that they are a licensed organization.

1 Another aspect that Dr. Brown told you about, that Mr.
2 Abington told you about, the fundamental nature and purpose of
3 these Zakat Committees, these charities have to be nonpartisan.
4 It's their traditional nature. Their traditional nature in
5 Islam, in Palestinian society. Dr. Brown told you it's a deeply
6 divided society, politically, by family lines, many lines. And
7 to be perceived as partisan would be to ruin what these
8 organizations do, which is to provide aid to the needy regardless
9 of political affiliation and to a society that uncontradicted is
10 in dire need of these kinds of services. Just as important,
11 Dr. Brown told you and Mr. Abington told you -- And they lived
12 there. Mr. Abington was there for years. Dr. Brown was there
13 fifteen months. He had been to Israel twelve times before that.
14 He's gone back three times a year since. Right in the heart of
15 this case, 1999, 2000. He reads Arabic. He speaks Arabic. He
16 canvases Palestinian press on a daily base, people in the
17 community -- activists, PA people. What did Mr. Abington tell
18 you? That they are not perceived in Palestinian society, these
19 Zakat Committees, as being part of HAMAS or controlled by HAMAS.
20 Mr. Abington visited each of these Zakat Committees, and he gave
21 you his conclusion. He worked for the United States Government
22 when he was making these visits. He knew that he had to be
23 careful if an organization was controlled by HAMAS. So his
24 antenna were up significantly during those visits.

25 Dr. Brown visited zakats. Again, their conclusion, no

1 perception in the community that they were controlled by or
2 operated for the benefit of HAMAS. And why is that so important?
3 I'll get to it more later, but that hearts and minds theory of
4 Mr. Avi, Dr. Levitt, can't exist if they are not perceived in
5 society as being controlled by HAMAS. There is no credit to
6 HAMAS. These organizations are not identified with HAMAS by the
7 population.

8 Another reason why Zakat Committees are not controlled,
9 because they are effective in their mission. This is why they
10 have the reputation they do. They are transparent, and what we
11 meant by that is their books are open. The first thing they gave
12 Dr. Brown was a financial report. We know they are ordered by
13 the Palestinian Authority. They provide regular financial
14 reports to the Palestinian Authority. We know that they are also
15 subject to raids by the Israeli government. They are subject to
16 closure by the Israeli government. Dr. Brown told you that one
17 of the Zakat Committees he went to, the director said that one of
18 the big problems was that the Israelis continually come by and
19 ask them specific questions about specific recipients of their
20 aid. All of this is an open book. Zakat Committees also provide
21 to those who need. They are on the ground in the community, and
22 they can verify it, and if they didn't, they would lose that
23 reputation that they have as the place where you can give your
24 money to perform your Islamic duty of zakat for charity. It's a
25 religious duty. It's one of the five pillars of Islam.

1 What other evidence do you have that these other
2 organizations are not HAMAS or controlled by HAMAS? They are
3 still operating today. They could be shut down by the Israeli
4 government at a whim. In Operation Defensive Shield, the Israeli
5 government went in in 2002 and raided all of these things. They
6 didn't shut them down. They are still operating. The
7 Palestinian Authority could shut them down at any moment. We
8 heard from Dr. Brown that Palestinian Authority closed down 103
9 charitable organizations in the West Bank two weeks. Not a
10 single one was a Zakat Committee. Not a single one was an
11 organization in this indictment.

12 Mr. Jonas said why can't they give to other Zakat
13 Committees? Dr. Brown told you why. They are a
14 quasi-governmental organization. They are chartered, one for a
15 locale. They are given a monopoly for the purpose of creating
16 this legitimacy so people will know where to go to give the
17 money. They are still operating today. None have been
18 designated by the United States. None of the people on the
19 boards that Avi mentioned, none of those people have been
20 designated a terrorist or a terrorist organization. What's the
21 list for if it's not to make those determinations? There is a
22 list. How do you make those determinations when a committee is
23 licensed under the full authority of the Palestinian Authority
24 and they have every incentive to shut it down if it's HAMAS.

25 By the way, in terms of designations -- and I'll talk

1 about this a little later -- none of the defendants, including
2 Mr. El-Mezain, have been designated as terrorists. Muslim
3 Brotherhood hasn't been designated. I'll talk about that later.

4 It's the government's burden to prove the Zakat
5 Committees, these organizations, are controlled by HAMAS. Did
6 the government bring any records from these committees to show
7 you where the money goes? Did they bring you records to show you
8 why they are controlled by HAMAS? No. This is their burden.
9 They can get all of this stuff. They got all of these bank
10 records from around the world. And Dr. Brown gave you very
11 clear, unequivocal conclusions. The Zakat Committees are not
12 political organizations. They are nonpartisan in how they
13 provide aid. They are not perceived as part of HAMAS, part of
14 the social wing or the network. And they are not controlled by
15 or operated for the benefit of HAMAS. Even Steve McGonigle, a
16 government witness who testified, a Dallas Morning News reporter,
17 when he went to this Zakat Committee unannounced saw nothing
18 political about it. Saw no indication that there was an
19 affiliation with HAMAS.

20 The historical development of these Zakat Committees
21 also supports the fact that they are not controlled by or
22 operated for the benefit of HAMAS. Government of Israel
23 established many of the Islamic institutions in the West Bank and
24 Gaza when the Israeli government was in control in 1967 to 1993
25 because they saw that as a way to fight the PLO which was

1 considered the danger to Israel at the time, Fatah, Mr. Arafat's
2 organization. The political winds have changed. So now the
3 political organization has changed in the context of this
4 prosecution. They operated under Jordanian and Egyptian rule and
5 the Jordanian law before that. You'll see that on the
6 certificates. They were formed in the 70's and 80's well before
7 HAMAS. They were formed well before the intifada. The Hebron --
8 International Charitable Society of Hebron, the registration
9 certificate that was issued in 1997 refers back to 1909, the
10 Ottoman law, before the PA, before the Israelis, before even the
11 British. The Ottoman Empire which was dissolved at the end of
12 World War I. This is the historical nature of the existence of
13 these committees.

14 You will see USAID documents and how they address these
15 issues. That's the United States Agency for International
16 Development. The Zakat Committees are not under HAMAS control.

17 Let's talk about the theories that Mr. Avi advanced to
18 you, the hearts and minds theory. Under that theory, when these
19 committees became controlled by HAMAS it had to be public,
20 publicly known. Otherwise, it wouldn't do them any good unless
21 those committees were identified by HAMAS as HAMAS so HAMAS could
22 get the credit. Mr. Jonas said yesterday if HAMAS can't get
23 credit, the people will not know who to support. So that
24 connection must be public, overt, obvious. If it's so obvious
25 and public -- In many cases I will do this committee by

1 committee.

2 Why are they licensed in 1997 by the Palestinian
3 Authority, the enemy of HAMAS? Why are they still operating
4 today? Why have they never been designated?

5 If the purpose -- If this hearts and minds theory was
6 true, there was a connection that was public, why did Mr.
7 Abington not know it? The United States representative, why did
8 no one tell him? Either the Israeli or United States
9 intelligence community. Dr. Brown didn't find it either. We'll
10 talk about them as witnesses and judging them as witnesses.

11 The antagonism between the Palestinian Authority and
12 HAMAS alone is a reasonable doubt since these committees continue
13 to be operated, managed, controlled and licensed by the
14 Palestinian Authority. The government hasn't tried to answer
15 this because it can't. Mr. Garrett will have another
16 opportunity, but keep in mind whether he answers these questions
17 and whether he does satisfactorily beyond a reasonable doubt.

18 They talk about the HAMAS wing, the election in 2006.
19 Holy Land was out of business in 2001. Hearts and minds. We
20 heard how HAMAS got control of Gaza in 2007. Hearts and minds?
21 No, force of arms. A coup. This hearts and minds theory is a
22 theory without support. And then the election itself doesn't
23 tell you anything because, as Dr. Brown told you -- the
24 government gives you a tiny slice, but you want to see the whole
25 pie. Dr. Brown told you he was an observer. Mr. Abington was an

1 observer of the Palestinian Authority. How is that for
2 impartial? Told you about the change and reform backed by HAMAS.
3 The issue wasn't hearts and minds; it was corruption. And that
4 HAMAS and Change and Reform recruited people who weren't HAMAS,
5 who weren't even Islamists, some of them secularists, as they
6 called them. Nonreligious people, as they call it. Not on a
7 HAMAS charter. That wasn't even an issue. And Dr. Brown told
8 you that. You can have any testimony read back and look at any
9 exhibit, and I urge you to do so if you have any questions.

10 The 6 series of documents, another important part of
11 Avi's testimony. He thought they were important because they
12 were found at a charity. Of course, he had never been to one so
13 he wouldn't know. You have heard from Dr. Brown and Mr. Abington
14 who have a familiarity with Palestinian society and know and been
15 to the Zakat Committees. They weren't surprised because those
16 materials are everywhere. Again, this is 2002, 2004, these
17 documents are seized. After Operation Defensive Shield, we heard
18 these martyrdom posters and postcards proliferated throughout
19 Palestinian society, and that's when the seizures were made.

20 They also don't know where they were found in the
21 building. Major Lior didn't know. They just came back in boxes.
22 Could have been in the trash he said. Could have belonged to
23 employees. Could have belonged to anyone. Mr. Jonas said they
24 were handing out postcards, and I'm trying to think who's
25 testified to that. And I realized Mr. Jonas testified to that

1 yesterday. There is no evidence in the record. Counsel's
2 argument is just argument. Has to be supported by the record.
3 And I urge you to look at the record. Pure speculation.

4 Now, Avi's dominant-person theory cuts against the
5 fundamental nature of the Zakat Committees. First of all, he
6 only mentioned a couple per committee, and as Mr. Cline pointed
7 out in his cross examination, we don't know the full scope of the
8 committee. But it's against their fundamental nature, regardless
9 of who is on the board, because they lose their authority in the
10 community to satisfy need if they are a political committee.
11 Think about the jury. Some of you may be Democrats, Republicans
12 or other parties. If you were identified as a Republican or a
13 Democrat, it would do violence to your oath here. Think of
14 General Motors. Who knows who's on that board? If they are
15 recognized as a Democratic or Republican board or corporation
16 that had a political point of view, they would put off a certain
17 number of investors. Zakat Committees survive on their
18 nonpartisan nature. They can't be identified with politics. It
19 wasn't a surprise to Dr. Brown that there were Islamists on the
20 board because there are Islamists in Palestinian society. So
21 even a random distribution, there would be Islamists on the board
22 and a number of them.

23 That raises another issue about Islamists. The
24 government wanted to argue with Mr. Avi when he testified. They
25 want you to equate Islamism with HAMAS, but that's not true. No

1 one testified to that. Dr. Brown, Mr. Abington said exactly the
2 opposite. Islamism is much broader than HAMAS. Dr. Brown told
3 you the majority of Palestine may even not be Islam. It changes.
4 It's different in 2006, 2007. But everyone wants you to think
5 they are the same. The government wants you to. We couldn't get
6 a definition from a witness. This is something they have to
7 prove beyond a reasonable doubt.

8 Avi is incapable of distinguishing between HAMAS and an
9 Islamist. That's why the Ramallah Zakat Committee -- Dr. Brown
10 told you the director didn't even have a beard which would be
11 unique for him. But Adly Yaish, the mayor of Nablus, Dr. Brown
12 knows of him very well. They were in Nablus for the elections.
13 That's where he was for the elections, and Mr. Yaish is not
14 HAMAS, but Mr. Avi puts him in that category.

15 The Barouk Center in Ramallah that Avi talks about,
16 Dr. Brown talks about that, too. Not HAMAS, just Zakat
17 Committees. How do you put a lot of people in HAMAS because they
18 have been on that Change and Reform ticket that was elected?
19 Dr. Brown has shown conclusively that was not the case. They
20 were not all HAMAS people who were elected. That's 2007, not
21 1995-2001 which is the time period of this case that's important.

22 I want to go through just quickly the individual Zakat
23 Committees. Mr. Avi said that Nablus was a HAMAS-controlled
24 Zakat Committee by 1999. Now, the registration ticket is Defense
25 1205. We'll show that for a second. We will show the Arabic

1 version so that you can see again what they look like. There is
2 the Palestinian Authority logo. There it is. 1997. There are
3 other documents, too. There is Government's Exhibit 140 which
4 corresponds to the Nablus Zakat Committee and the Holy Land which
5 has the material at the top in the letterhead which talks about
6 its registry, license, when it started, been operating for a
7 quarter century. Government's Exhibit 1-109. Government's
8 Exhibit -- Think about the Holy Land's position if you are
9 getting documents with the Palestinian Authority registration
10 certificate on it, an organization being permitted to operate by
11 the Israelis, the Palestinian Authority and the United States
12 Government and whether you can deal with them or not.

13 Ramallah, 1207 is the certificate. Mr. Avi said it was
14 late 1989. He had never been there. Dr. Brown was. Nothing
15 political about it. You can look at other documents.
16 Government's Exhibit 2-47, the 1981 letter where Holy Land asks
17 for a license from Ramallah, and they get it back. It's
18 permission to operate granted by -- I'm sorry. It's not
19 Palestinian Authority. It's before the Palestinian Authority.
20 It's dated 1989. Permission to operate by the Israeli
21 government. This is at a time when it's already a known HAMAS
22 organization? Can't be.

23 Mr. Avi said also Ramallah, the Zakat Committee was
24 under intensive surveillance by the Palestinian Authority. So
25 why is it still operating today if it belongs to HAMAS? They

1 closed 103 organizations two weeks ago.

2 Tulkarem, Mr. Avi didn't have a date as to when it
3 became a HAMAS Zakat Committee in his opinion. But 1065, another
4 document found in the Holy Land files, it's a letter from the PA
5 with respect to value-added tax, and attached to it is the
6 registration ticket.

7 Other documents from 1995. Government's Exhibit 1-173,
8 the certificate for the hospital run by Jenin.

9 Defense 1109, again found in the Holy Land office, the
10 registration certificate, the Al Razi Hospital run by Jenin.

11 Government's Exhibit 148, the fact is they say it's run
12 by Mr. Zakarneh. The logo is on it, the registration ticket.

13 Defense 1070, a letter from an Israeli official in Hebrew is
14 attached, the original Hebrew. A letter from an Israeli official
15 to Mr. Zakarneh, this person who already years earlier is
16 supposed to have been identified as HAMAS. February 24, 1994
17 letter to him from a medical services hospital telling him how
18 many beds he can have and all the rules and regulations he needs
19 to follow to operate. This is the Israeli government with
20 complete control over Jenin in 1993 before the Palestinian
21 Authority. A letter to Mr. Zakarneh. How can that be if he's
22 HAMAS, everybody knows he's HAMAS? This is two years after Mr.
23 Avi said it was taken over. That letter was faxed to Holy Land
24 in 1998. Still operating at that time. Operating today.

25 Qalqilla, Exhibit 1204, defense exhibit. Mr. Avi said

1 it was HAMAS until 1998 at least. As Government's Exhibit 128
2 shows it was established in 1992. There is a letter in February
3 of 1997 with the wakf logo and stamp.

4 The Islamic Science and Culture Committee, 2-163 says
5 it's established 1994, licensed. Holy Land sent it a letter with
6 a check list of things it needs in order to verify. That was
7 shut down according to Mr. Avi in 1995 for tax fraud purposes.
8 Never designated by the U.S.

9 Hebron, International Charitable Society of Hebron.
10 Defense 1206 which dates it back in 1909, as I said before.

11 Young Men's Muslim Association which is part of the
12 Hebron branch which the government put in four projects there.
13 The registration ticket of 1987 attached to a 1994 project
14 request. Al Mughtaribien School, why would they put that there?
15 It's westernizing. Dr. Brown told you. They wanted it to seem
16 that it went to HAMAS. This is a westernizing school this money
17 went to.

18 Also, I want to talk to you about the Philadelphia
19 meeting. The 3 series are the ones found in Mr. El Barasse's
20 home. I want to cite to you something Mr. Jonas said, not
21 yesterday, but in court during the case. He said that unless it
22 can be shown that a defendant received that letter and entered
23 into his state of mind with regard to the charges at issue here,
24 it wouldn't go to the state of mind. I think it applies just as
25 much to the 3 series. There is no proof those documents went

1 anywhere other than Mr. El Barasse's home. I asked Agent Burns
2 about that. They had no evidence that they ever went anywhere.
3 Many of them were handwritten. We told you that. Ms. Hollander
4 showed you many -- 3-78, 3-10, 3-80, 3-49, 3-92. 4 series as
5 well has handwritten documents. You have to ask the question
6 before you can rely on those documents. Who wrote them? We
7 don't know. Why? We don't know. For whom? We don't know.
8 Representing what point of view? We don't know. To whom they
9 were communicated? We don't know. Think about relying on that
10 kind of evidence to find beyond a reasonable doubt. I submit you
11 cannot.

12 Documents have problems as well. Government put in
13 3-19, the resolution from the government claims a version of
14 Occupied Land Fund board meeting in 1991 which by its own
15 statements is not that. It's something else. But it says that
16 Mr. El-Mezain was going to get a thousand dollars a month.
17 Didn't. Said there would be a security appraisal of the Occupied
18 Land Fund, never saw that, didn't happened. By Izzat Mansour.
19 No proof of that. That Mr. Elashi had to pay \$17,000 to the
20 Fund. Didn't happen. That the fund would have to pay \$25,000 to
21 the Central Committee. Never happened.

22 Government talks about two sets of books. Why would
23 there even be two sets of books in 1991 which was four years
24 before HAMAS was designated? There was no need to skulk around.
25 Nothing illegal going on, then or after.

1 These facts support Dr. Brown's conclusion that these
2 documents he was shown on direct and the government showed him --
3 some the same and some not. 347, the first entry says Ramallah
4 Committee not licensed. It's wrong. Plain wrong. Why should he
5 rely on a document like that? No one came in and testified about
6 those documents and where they went or who approved them. These
7 were about Islamists, not HAMAS. They are not the same thing.
8 The Philadelphia transcripts, they say "We as Islamists." It's a
9 different thing than HAMAS. The government doesn't want you to
10 understand that. They want to stop you from looking at the
11 evidence, the totality of the picture. "Brothers, we know that
12 can mean a lot of things." One of the things it can mean is
13 Muslim Brotherhood. The Palestine Committee could be the Muslim
14 Brotherhood. No one said they were talking about HAMAS, except
15 the prosecutors. No one testified to that; no one can. No one
16 knows the origin of these documents and who wrote them and why.

17 2-22, if we could pull that up. With respect to Mr.
18 Zakarneh, Jenin Zakat Committee. Doesn't say he's HAMAS. It
19 says "Islamist, semi-brother inclined toward the Brotherhood."
20 And that letter about the Jenin hospital, Defense 1070, is to
21 him. There are descriptions of others. You should look at the
22 description about Nablus, Young Muslim Men's Association of
23 Hebron. Tulkarem, it says we don't have anybody there, and Mr.
24 Beitawi is on there.

25 THE COURT: Mr. Dratel, I just had a message that the

1 remote courtroom is having difficulty hearing you. They ask you
2 to speak directly in the microphone.

3 MR. DRATEL: Yes, sir. Look at the description.
4 Nothing about HAMAS. Some of them don't even say Islamists. The
5 term is self-identification. The government played part of 1-318
6 A yesterday, the deportee video, where they go around the tent in
7 1992, and they said Mr. Hammed Beitawi, they are going to say
8 he's HAMAS. He didn't. I don't know if you noticed that. He
9 didn't. Same thing with Abu Said. He didn't say he was HAMAS.
10 Rantisi said he was HAMAS, but those two didn't say they were
11 HAMAS. They want you to not listen or pay attention to the
12 printed word or translation. The Government's Exhibit 16-59, the
13 Philadelphia meeting, Page 3, he said "The Islamists are weak in
14 Nablus." This is 1993, two years after Avi said it's already
15 controlled, the Zakat Committee.

16 By the way, the Philadelphia meeting, Mr. El-Mezain was
17 not there, not in the FISA's, the telephone conversations that
18 were intercepted about it after the coverage starts. And you
19 would think there would be something on it if it's so important.
20 Nothing on Mr. Ashqar or Muin Shabib's wire taps which are
21 running at the same time. Nothing about Mr. El-Mezain with
22 respect to this meeting.

23 Mr. Avi also liked to rely on the kindergarten videos.
24 Those videos he shows, none of them were seized from Holy Land or
25 Infocom. None of them were in the relevant time period. They

1 were found by the Israeli government in their raids in 2003,
2 2004, not necessarily from the charities but found there. Mr.
3 Avi couldn't say what. Dr. Brown saw them. It didn't shock him
4 because he had seen them. He told you his conclusion that one
5 item was not carrying the day based upon his decade-long study
6 and research of this area as a professional. He has devoted his
7 life to it, read books about it.

8 If you look from the flip side, Holy Land's side of it,
9 another important instruction, why is it important from Holy
10 Land's side. From some of the accounts, for the conspiracy you
11 have to find willfulness. What does that mean? The instruction
12 defined willful as -- It means the act to which it refers was
13 committed voluntarily and purposely with the specific intent to
14 do something the law forbids; that is to say, with bad purpose.
15 That is to say, to disregard or disobey the law. You have to do
16 it knowingly.

17 Conspiracy, "that the defendant under consideration
18 knew the unlawful purpose of the agreement and joined it
19 willfully; that is, with the intent to join the unlawful
20 purpose." So you have to know what Holy Land would think, what
21 Mr. El-Mezain would think based upon all the facts about this
22 Zakat Committee that I just presented, that they are operating,
23 licensed, operating under the nose of the Government of Israeli
24 until mid-1994 when the Palestinian Authority takes over, and
25 they are registered and licensed in 1997. You have all of these

1 letters -- Defendant's Exhibits 1070, 1065, 1109. Jenin,
2 Tulkarem, the other documents from the other committees with the
3 PA logo and the registration information right there. Holy Land
4 asks for licenses and gets it.

5 Think about all Holy Land did to make sure that it was
6 on the right side of the law. Hired an excongressman lawyer, Mr.
7 Bryant, to navigate the territory and find out what we do. Are
8 we doing anything wrong? They went to the government to learn
9 that. They verified all of these projects with those photos.
10 What they didn't know at the time I guess is they should have
11 been video taping the Zakat Committees. Verified all the orphans
12 and all the documents with paper trails. With respect to
13 orphans, Dr. Brown established that's not the defendants' view
14 that an orphan is someone without a father; it's the Islamic view
15 because the father is the breadwinner in Islamic tradition. So
16 without the father, you are an orphan.

17 They studied the law and the list, and that's the
18 conversation between Mr. Shukri Abu Baker and Mr. Elashi which
19 you will hear from other counsel. They didn't provide aid to any
20 designated organizations once the law was in effect, and they
21 made wholly transparent in-kind and monetary transfers through
22 banks. And some of them in Israel and some of them in the U.S.

23 Now, what else did Holy Land get? They got 1-271.
24 They got letters from a variety of different organizations. I
25 urge you to look at them. It's 10th Anniversary, congratulating

1 them, from the Halhul Committee. It talks about projects.
2 Islamic Zakat Committee of Gaza, talks about projects for Holy
3 Land. President of Lebanon, Dr. Brown told you not HAMAS, a
4 Christian. By the way, he uses the word "steadfast" in that
5 letter which Agent Burns said was a code word for HAMAS. I don't
6 think the Christian President of Lebanon was using that as a
7 code. I think it means what it means: Steadfast. Political
8 Prisoners' Association, not an HAMAS association. Mr. Abington
9 told you that over 10,000 people are in jail. The whole prisoner
10 issue crosses ideological lines. Dr. Brown told you that as
11 well. There is a Palestinian Ministry for prisoners. The
12 Palestinian Authority Ministry. They spoke of the broad spectrum
13 of prisoners and the special place that prisoners hold in the
14 Palestinian society. This is in 2000 right in the heart of this
15 indictment. Palestinian Committee of Planning and Cooperation.
16 Not the logo, the actual ministry. The Ministry of Social
17 Affairs. Those are letters to Holy Land congratulating it on its
18 decade of assistance to the Palestinian people. Office of the
19 PLO, Office of the President, PLO. You can't get more Fatah than
20 the PLO, Fatah being the party of Arafat, the party in opposition
21 to HAMAS. Jordanian Hashemite Fund for Development from the
22 royal family in Jordan. Mr. Bryant told you, all the government
23 had to do is tell them don't deal with these Zakat Committees.
24 The government didn't tell them that. Wouldn't tell them that.
25 The government didn't know itself. I don't think to this day

1 they have evidence worthy of belief, certainly not beyond a
2 reasonable doubt.

3 Another important aspect of this case is timing. Mr.
4 Jonas yesterday and the government in its case spent an
5 extraordinary amount of time on events happening years before the
6 designation of HAMAS, January 1995 which covers the executive
7 order. October of 1997 which covers Counts 1 through 10 which
8 are the material support counts. The video we played of Mr.
9 El-Mezain was from 1988, the first year of the intifada. Seven
10 years before the designation. Years before suicide bombings by
11 HAMAS. And by the way, at that point Mr. El-Mezain could have
12 mentioned HAMAS, praised HAMAS in his speech. It wasn't illegal.
13 He didn't mention HAMAS. But he did praise the intifada and the
14 children. He talks about martyrdom. Talks about the stone in
15 the hand of a child. He talks about the demolished houses and
16 the sacrifices by the Palestinian people. Talks about some of
17 them being martyred in the pulpit. Look at the government's big
18 Power Point, 24-29. It's all from 2001. A lot of evidence,
19 post-closure. Post-2001. Khalil Mishal, 2002, Rantisi, 2003,
20 Sanabil, Al-Aqsa Germany, 2003. Al Saleh and its president,
21 2007. The designations are all after. The whole 6 series of
22 documents that Mr. Avi put in, all of these are seized after Holy
23 Land is already out of business. The earliest, Spring of 2002.
24 Many later. We spent whole days in court on things that happened
25 before the designations or after 2001, the entire 3 series. No

1 document from the 3 series that postdated this investigation.
2 The entire 16 series of the Philadelphia meeting and those Ashqar
3 conversations, all predesignation. Entire 6 series is after.
4 Most of the 2 series documents were well before. Much of the 5
5 series of records are before. Look at the American Express
6 records, the phone records. It's all outside the time period
7 that's really important in this case.

8 The Court's instructions will say "You are here to
9 decide whether the government has proven beyond a reasonable
10 doubt that each defendant is guilty of the crimes for which he
11 has been charged. The defendant is not on trial for any act,
12 conduct or offense not alleged in the indictment." What's
13 missing from after that designation date, from 1995? All those
14 faxes to Mr. El-Mezain. There was one in the first week of
15 February of 1995. The designation is January 23 of 1995. No
16 faxes after that one in February. All the other ones predated.
17 Any contacts between Mr. El-Mezain and Mr. Mousa Abu Marzook?
18 None. Even though Mr. El-Mezain's wire tap was up from August of
19 1994 and Mr. Marzook was not arrested until July of 1995. No
20 contacts between Mr. El-Mezain, Ashqar or Khalil Mishal or El
21 Barasse or anything like that. No American Express receipts from
22 Holy Land after the designation. The fundraising by Mr.
23 El-Mezain after the designation? No. They knew his schedule
24 from the wire tap. Agent Burns acknowledged that. They knew
25 where he was going and all the speeches he was making for Holy

1 Land. They didn't go put in a single one from him. They
2 recovered thousands of videos from the Holy Land. Did you see
3 one regarding Mr. El-Mezain after 1995? Any Holy Land
4 conferences? Any El-Mezain speeches? Any video tapes from Fawaz
5 Mushtaha's house, even though those were recovered in 2005? No.

6 Muslim Brotherhood, you would think they would be
7 designated after the descriptions by the government. Mr.
8 El-Mezain gave information about his activity in the Muslim
9 Brotherhood. And in the UASR, named names of people in it to
10 Agent Burns in an interview in 2002. Yesterday, Mr. Jonas said
11 Mr. El Barasse was the archivist for the Muslim Brotherhood in
12 the U.S. Who testified to that in this case? And then I realize
13 again it was Mr. Jonas who testified. No one testified to that.
14 Check the record. Have it read back. Where is the testimony
15 that Mr. El Barasse was the archivist? It's an easy answer.
16 There is no testimony.

17 Yesterday, he also said the security document was
18 created by the Muslim Brotherhood. I'm trying to think who
19 testified to that. Mr. Jonas. Ask that question. Where is the
20 testimony the Muslim Brotherhood created that document? Again,
21 it's an easy answer. No testimony. Mr. El-Mezain acknowledged
22 he was in the Muslim Brotherhood. The documents establish that
23 it existed before HAMAS and during HAMAS, that it's distinct.
24 Dr. Brown told you that. Mr. Abington told you that even in
25 Palestine there are Muslim Brothers who do not consider

1 themselves HAMAS. The documents prove it. July 1994, seven
2 years after HAMAS has been formed. 378, an agenda. These are
3 the different elements of Muslim Brotherhood. 421 from the
4 Ashqar search. Muslim Brotherhood is responsible for charity.
5 Distinct from HAMAS. All the documents that refer to Islamists
6 and Brotherhood, it's Muslim, not HAMAS. They are distinct.
7 They talk about the Islamic Action Front in Jordan like it's
8 HAMAS. Well, HAMAS was expelled from Jordan in 1990. The
9 Islamic Action Front still puts members in parliament today.
10 They are not the same. They are different.

11 You also have 17-1, the Ashqar wire tap. Even before
12 the designation date you have Holy Land not being a member of the
13 team operating independently. 6-33, where Mr. El-Mezain is
14 interested in Al Razi Hospital and Holy Land does not control
15 them, and El-Mezain will not listen because Holy Land is doing
16 this job independently based on need, not creed.

17 The government yesterday gave lip service to the First
18 Amendment. Lip service. Said they said it, but they don't mean
19 it. If you look at the entire session yesterday, it was about
20 speech, all what people say, not what they do. Nothing Mr.
21 El-Mezain did, nothing about knowingly doing so. Association,
22 association, association -- that's what the government wants you
23 to convict on, but you can't. It's protected by the First
24 Amendment. He said he knew Mr. Azzam. They want you to convict
25 him for that. Azzam died in 1989. The Court's instruction on

1 association, "The mere fact that certain persons may have
2 associated with each other and assembled together and discussed
3 common interests does not necessarily establish proof of the
4 existence of a conspiracy." Bear that in mind. The First
5 Amendment, Ms. Hollander read it to you yesterday. I'll read it
6 to you. "The First Amendment guarantees all persons of the
7 United States the right to freedom of speech, freedom of religion
8 and association. Because of these Constitutional guarantees, no
9 one can be convicted of a crime because of his beliefs, his
10 expression of those beliefs or his association."

11 The government says they are not trying to do that.
12 What else are they trying to do with Mr. El-Mezain? The faxes he
13 received? That he talked to people in HAMAS?

14 Let's talk about credibility. First about the witness
15 who wasn't here. Mr. Jacks told you in his opening that there
16 would be a Mr. Shorbagi who worked with the defendants who would
17 say they were working on behalf of HAMAS. You don't have to ask
18 for Mr. Shorbagi's testimony because he wasn't here. He was an
19 employee, too. That is what Mr. Jacks told you. So obviously no
20 one was here to testify -- not one witness from the government,
21 no one familiar with how the Holy Land was operating. No one
22 from Palestinian Society saying, oh, yeah, these are all
23 identified with HAMAS, everybody knows that. Not a single person
24 with the resources the government put in this case -- all the
25 surveillance, everything -- nothing. Not a single witness.

1 And with Agent Burns, as she told Ms. Hollander on
2 cross examination, she was only interested in looking for stuff
3 that supported her theory, and the Court will tell you if the
4 witness has any particular reason not to tell the truth -- "Did
5 the witness have a personal interest in the outcome of the case
6 or a relationship with the government or the defense?" So ask
7 yourself, Agent Burns, when she kept coming up to the lectern to
8 direct questions, does she have an interest in this case? Is she
9 lying to the government? She is on the prosecution team. That's
10 why I talk about personal knowledge. She said she didn't know
11 who Madeliene Albright was; she said she was from England. She
12 looked it up and came back the next day. When that letter was
13 written to Zakarneh by the Israelis, she resisted that. She
14 didn't know. She said may have been after. Anyone familiar --
15 Anybody who knows anything -- who wants to know anything accurate
16 knew that. She resisted.

17 Agent Miranda, just talked about two things, quickly.
18 These witnesses to a certain extent almost don't matter once you
19 know about the Zakat Committees. But Agent Miranda, two things:
20 One is he went into cross examination about the documents that
21 show Hammimi was brought to the United States in 1997. He said
22 that's because he was no longer HAMAS and everyone knew. It was
23 public by 1996 that he broke with HAMAS. Yet in 2001 Agent
24 Miranda was trying to manipulate the designation process by
25 having Mr. Hammimi designated, even though it was public in 1996

1 that he had broken with HAMAS. Does he have an interest?

2 Defendant's Exhibit 1087 when he alphabetized the list
3 they downloaded from Holy Land. I urge you to look at it. He
4 wanted to make it seem -- without putting it in evidence, just
5 referring to it -- that it showed all the speakers and
6 engagements they had for Holy Land in the time period designation
7 and other aspects of it, and it turned out that he ran from it.
8 He said I'm not confident to draw a conclusion. That's what he
9 told Mr. Westfall on cross examination. He wanted to make it
10 seem as if after the conversation between Mr. Odeh and Mr. Baker
11 where Baker said "Stay away from Deeb Anees, he's HAMAS," that
12 they continued to raise money through Anees. When we had the
13 document on cross examination it turns out it means nothing, that
14 those smaller increments probably were orphan names every month
15 after and that Holy Land did not use him. There is no proof that
16 Holy Land used him. There is no travel records or anything to
17 establish what he tried to say on direct, that all of these
18 entries represented speaking engagements.

19 Matthew Levitt, with respect to the Zakat Committees,
20 not an expert on them, not an expert on the law, doesn't know
21 Arabic, not an expert on the Muslim Brotherhood. Yet he opined
22 on these topics anyway. Not an expert in Islam. His reliance on
23 bad sources. Dr. Brown told you about the Center for Special
24 Studies of Israel, political agenda. Peppered throughout
25 Dr. Levitt's books. Look at Wikipedia. You can put your own

1 entry on Wikipedia. You can edit. Testified seven times for the
2 government in the last few years. Works in the FBI and Treasury,
3 the two agencies that have a stake in this prosecution.

4 Major Lior told you there were no videos. Avi told you
5 there were. Somebody is lying. I don't know what you say about
6 someone who comes in and testifies under an alias and has to
7 consult with his lawyer during testimony. Mr. Avi himself here
8 under orders, he told you. Is that objective? Under orders from
9 the Israeli Security Agency. He has learned everything to
10 testify. He has never done anything in an academic or commercial
11 way. It's a side line. He does it on the weekends he said.
12 Someone testified that having the Israeli Security Agency in
13 charge of investigating is like having the fox in the hen house.
14 The inaccuracies that are pointed out by Dr. Brown in Mr. Avi's
15 presentation -- the Barouk Center from Avi's report, the Mayor of
16 Nablus, the Palestinian Authority Attorney General who's totally
17 unreliable, corrupt, dismissed. He didn't know about the
18 Jordanian 1990 law. He didn't speak Arabic. He said that HAMAS
19 was still HAMAS. Judea and Summaria, tried to slip in once on
20 direct, and on cross he said I don't know really what it is. How
21 about the meaning to Palestinians and Israelis? You have to
22 believe Mr. Avi in order not to have reasonable doubt about these
23 organizations. Why would you believe them beyond a reasonable
24 doubt? Why would you believe Mr. Avi beyond a reasonable doubt
25 and the Israeli intelligence he's relying on when the U.S.

1 government won't, as Mr. Abington told you, when the CIA doesn't
2 give that kind of intelligence, that kind of credence? Talk
3 about -- talk about surgery. Think about if Mr. Avi said have
4 surgery and you went for a second opinion to Mr. Brown and a
5 third opinion to Mr. Abington. Would you hesitate before having
6 that surgery? You think you would? I know you would. Probably
7 wouldn't have the surgery at all. That's reasonable doubt right
8 there. Mr. Abington, Dr. Brown, look at their credentials. I
9 couldn't go through his whole resume. Too impressive, too
10 voluminous. His career is dedicated to this. Learned Arabic,
11 went over there, lived there, did business, talked to people.
12 Did it look like he had an axe to grind? Mr. Abington, a career
13 U.S. Diplomat. John Bryant, Congressman, lawyer, ambassador. I
14 think the one word that describes all of them is integrity. And
15 would you choose an ISA agent here under orders or a U.S.
16 Diplomat and a professor not getting paid? And Dr. Brown
17 consulted with the U.S. government and helped to write
18 Constitutions, and Mr. Abington, getting briefings from the CIA,
19 as opposed to Avi. All he has is what's here. Secret. Not even
20 his name. Mr. Abington, Dr. Brown, Mr. Bryant, are they HAMAS?
21 Mr. Garrett cross examined Dr. Brown about the ivory tower, as if
22 Dr. Brown was in this ivory tower removed from reality. Well, he
23 visited a Zakat Committee. Avi, no. He knows Arabic. He can
24 read the Palestinian press for himself. Avi, no. Dr. Levitt
25 said it was a good idea to visit Zakat Committees. He would do

1 it afterwards. Does he read Arabic? No. Avi does read a little
2 bit. Can't follow it, he said. Certainly not to the extent of
3 reading the papers every day. He can read the translations.
4 Dr. Brown taught at an Israeli university. He has made those
5 life or death calls with respect to Iraq. You heard him on that.
6 He has consulted. He has canvased the Palestinian media
7 firsthand for a decade. So who lives in the real world?
8 Dr. Brown, visiting Zakat Committees, learning Arabic, living in
9 Palestinian society for a year, visiting constantly? Or Mr. Avi
10 sitting in front of his computer and working his VCR? Who has
11 the practical experience? Who is distant from what's really
12 going on?

13 Another of the Court's instructions is extremely
14 relevant in that regard. "Did the witness clearly see or hear
15 the things about which he or she testified. None of the
16 government's witnesses saw or heard anything that they testified
17 about in this case."

18 They are all working with someone else's work.
19 Secondhand. And the scope of the government's investigation is
20 important. The breath of the coverage. August 1994, November
21 2003, every phone call of Mr. El-Mezain is monitored. Think
22 about a decade of your phone calls monitored.

23 We talked about -- We know if he had a cell phone they
24 could find out in a second. They could monitor that, too. There
25 is no evidence he had a cell phone or anything like that. The

1 translator Mr. Shafiq said he listened to thousands of call. You
2 know about the other wire taps of Ashqar in 1993, Muin Shabib in
3 1994, and the Philadelphia meeting. Not only audio and video,
4 taping meetings with Ashqar, telephone conversations from 1990 to
5 1992. Again, the telephone records they got from Mr. El-Mezain
6 before his phone -- before even the wire tap was on. Mutual
7 assistance legal treaties with other countries. The subpoenas,
8 the letters interrogatory with other countries. Public source
9 documents. All the trouble the government went to. Think about
10 what they are able or really unable to bring to you about Mr.
11 El-Mezain. They talk about what Mr. El-Mezain said. He told the
12 truth. You can tell. He disclosed substantial information about
13 Marzook, about their relationship. Cousins. He volunteered that
14 his other cousin was one of the deportees and affiliated with
15 HAMAS, a supporter of HAMAS. He acknowledged that he was in the
16 Muslim Brotherhood. He talked about his activism in New Jersey
17 with the Muslim Brotherhood. It's not surprising that Mr.
18 El-Mezain would be in Marzook's address book. They are cousins.
19 That's why. It's the government's responsibility to tell why,
20 not to ask to assume all of these why questions. It's the
21 government's burden beyond a reasonable doubt.

22 The calls between Mr. El-Mezain's number and Mr.
23 Marzook's number, no substance. Many of them were one-minute
24 calls. That's a hang-up when the answering machine comes on.
25 It's the shortest unit on a phone bill. Could have been their

1 wives or families talking. They are related. We know Ms.
2 El-Mezain has contact because she's the one that told Mr.
3 El-Mezain that Mr. Mousa Abu Marzook was leaving the country, had
4 been released and was heading to Jordan. We talk about the
5 deposition, 7-1, and Mr. El-Mezain's answer about IAP. They just
6 said no. But it's more than no. Here is the question. The
7 question is a long and implicated one.

8 "Do you know of any relationship or dealings that any
9 of you principals of Holy Land Foundation had with the Islamic
10 Association for Palestine in January of 1989 that would have
11 caused the IAP to know about the Occupied Land Fund and what it
12 was doing?"

13 Answer, "No. Actually, we -- You asked me before about
14 the people of IAP, and I said to you we know these people, but we
15 don't have any relation with them, and they know that we
16 established Occupied Land Fund in that time, not not only the
17 IAP." The answer wasn't no. The question wasn't is there a
18 relationship. The government made it seem that was it.

19 Now, the relationship between Mr. Mousa Abu Marzook and
20 Mr. El-Mezain, again, disclosed. Told them he was a cousin.
21 Agent Miranda said he didn't disclose the nature. But he said
22 they were cousins, knew him, grew up with him in Colorado. There
23 are checks from Mr. Mousa Abu Marzook to Mr. El-Mezain. I don't
24 know if Mr. Garrett will go into this. Mr. Jonas did not. They
25 are irrelevant in that they date back from 1989 to 1990. Small

1 amounts in the context of other numbers, and there is no proof
2 that they meant anything, that they have anything to do with this
3 case.

4 Now ten years' worth, a decade of monitoring every
5 single phone call of Mr. El-Mezain -- this is what the government
6 introduced. Now, if you remove the faxes from the Islamic
7 Association of Palestine, we're left with this, and if you remove
8 parts of conversations that the government didn't put in at all,
9 we're left with this from a decade. What are these
10 conversations? One with Abdulraham Odeh about Oklahoma City.
11 Abdulraham Odeh calls El-Mezain. Let's do something in Oklahoma
12 City. Another, about the legal defense fund for Mousa Abu
13 Marzook, which by the way Mr. Cline established on cross
14 examination with Agent Burns was legal and licensed by the
15 Treasury.

16 Another. Mr. El-Mezain being informed that there is a
17 report that Mr. Mousa Abu Marzook is going to be released to
18 Jordan. He's so in the loop he has to be told these things. He
19 doesn't know. His wife has to call him and tell him that Mousa
20 Abu Marzook had been released. This is from a news report
21 someone is reading to him. The other one, months before the
22 actual release. He doesn't even know. This is the one with his
23 wife telling him that Mousa Abu Marzook has been released. By
24 the way, on this one he's told your brother is being released,
25 and what does Mr. El-Mezain say? Read the transcript. I urge

1 you to. Read the transcripts. 15 series. This is 15-33. He
2 says Mahmud? That's his brother, his biological brother. He
3 doesn't know what she's talking about. It takes like a page for
4 him to get it. And then one page on January 24, 1995 which is
5 not someone from the Holy Land but someone named Abu Bara'a
6 saying President Clinton has just designated HAMAS. El-Mezain
7 has to be told. He doesn't know. He says right now? Can you
8 imagine? And then there are a couple of ones where he's called
9 about suicide bombings. Mr. Jonas said yesterday he had a
10 particular interest in suicide bombings. That's really an
11 extraordinary statement. He testified to that, Mr. Jonas. No
12 one else. He gets three calls. Dr. Levitt testified to more
13 than a dozen HAMAS suicide attacks between 1993, 2001. He said
14 those were only highlights. There were many more. He gets calls
15 on three of them, and that makes him particularly interested. He
16 gets a fax from somebody, a newsletter. I'll talk about the IAP
17 faxes in a second. That's interesting because the one that he
18 gets from Abdulraham Odeh, his first response -- And this is
19 15-21 and I'll read it to you. And listen to these conversations
20 because they are in Arabic. You should really hear the nature of
21 his response -- it's not just the printed page that does it
22 justice -- to see whether he is happy or has joy or a particular
23 interest in this type of activity. He's told there are eighteen
24 soldiers dead and sixty injured, and his response is "Oh, God."
25 You want to hear joy? Listen to 133, 15-133, when he hears from

1 his wife that Mr. Mousa Abu Marzook is being released. Listen to
2 those conversations.

3 There is another conversation, 131, with someone who
4 calls about a suicide attack. And at one point Mr. El-Mezain
5 laughs, but he laughs because his friend says -- talks about a
6 one to one thousand ratio between Israeli and Palestinian lives.
7 He says "One Israeli, a thousand Palestinians die," and Mr.
8 El-Mezain laughs. It's a bitter laugh from someone who knows how
9 devalued Palestinian life is. It's not laughing at the suicide
10 bombings. His laugh is a bitter laugh, not joy. Listen to these
11 conversations, and you will see his responses.

12 The Yaish conversation when he is told that Yaish is
13 dead. This is 15-66. I'm sorry. Not 15-66. It's 15-5. He's
14 told about the engineer being killed by the Israelis. He's told
15 "I just heard they assassinated Yaish," and Mr. El-Mezain says
16 "Who did that?" And Mr. Odeh obviously doesn't think he knows
17 who he is talking about, and he says "You know, the engineer in
18 Palestine." Mr. El-Mezain doesn't necessarily know what they are
19 talking about.

20 A voice mail from Khalil Mishal before the designation
21 of HAMAS, nine years before Khalil Mishal's designation that he
22 doesn't return. Doesn't go to a conference. Didn't go to
23 Turkey. You would know if there was any evidence that would
24 support any of these suggestions. You would have heard about it.

25 This is what they wanted to show you is beyond a

1 reasonable doubt. This is what they wanted to show you about a
2 particular interest in suicide bombings.

3 The IAP newsletters, look at them. They talk about a
4 variety of different sources. They quote the New York Times.
5 They quote Israeli newspapers. It's a newsletter from the IAP,
6 and I don't think the First Amendment in the Court's
7 instructions -- the First Amendment doesn't permit you to convict
8 on the basis of what newspapers you read. I asked Agent Burns if
9 in 2003 he was asked about the faxes and how he received this and
10 why, and there was an answer, and the government objected to what
11 the answer would be, and so it was hearsay. So it didn't come
12 in.

13 There was some confusion about the fax dates on Mr.
14 El-Mezain's machine. You know it can't be the fax dates before
15 the bombings because they talk about the number of casualties and
16 the press reports and things like that. So it's a problem with
17 his fax machine. But when Odeh called him about the one the
18 government kept pointing to -- but when Odeh called him about it,
19 he didn't know about it. He had no idea. Look at 15-59 and
20 15-56, the faxes we put in as well. The source of materials --
21 British, Israeli, American newspapers.

22 15-143, a conversation between Shukri and
23 Mr. El-Mezain. And the government put it in for the purpose of a
24 paragraph where Mr. El-Mezain says -- Mr. El-Mezain says that --
25 They are talking about a conversation that Shukri has had with a

1 reporter and the conversation that Shukri had with the reporter
2 about what Holy Land's connection with HAMAS was before
3 designation. Mr. El-Mezain says "Tell her what? What HAMAS? I
4 mean regarding donations to HAMAS, at that time we're not
5 illegal." There is a difference between legal and illegal. If
6 you think something is wrong, you comply because you want to keep
7 your business afloat. There is no evidence that Mr. El-Mezain
8 ever felt differently about the law, that he says don't worry
9 about it. Don't worry about the law. We're going to give to
10 HAMAS through HAMAS-controlled Zakat Committees. There is no
11 evidence anywhere. And he is allowed to have that opinion. It
12 wasn't reflected in the conduct.

13 Also on Page 11 of that same transcript, this is what
14 Mr. El-Mezain says to Shukri after -- during the conversation.
15 "By God, I personally believe" -- And we had to put this in. The
16 government didn't want this in. "By God, I personally believe
17 that people who want to live in peace and those that want to live
18 in killing, they will keep killing others, and they are the ones
19 who keep claiming to be peaceable." The government wants you to
20 believe that these are guarded conversations, that one reflects
21 something and the other reflects nothing and they both existed.
22 In fact, Mr. El-Mezain abided by the law and knew the difference
23 once that January 23rd, 1995 designation occurred. Ten years.
24 Think of how many indiscretions you can have in ten years of
25 conversations. Not a single conversation of Mr. El-Mezain. How

1 is the fundraising going for the HAMAS? How is the HAMAS Zakat
2 Committees going? How are things going with HAMAS? Not one
3 conversation. No one is that good over a ten-year period. You
4 know what else? Remember again all the conversations the
5 government had, all the notices they had of Mr. El-Mezain making
6 speeches around the country, nothing from that ten-year period,
7 nothing.

8 How paranoid the people at Holy Land were and
9 rightfully so to a degree. The Dallas Morning News was after
10 them. The Antidefamation League, the Israeli lobby group, was
11 after them. They had been the subject of reports continuously
12 since the early 90's. The government can't have it both ways.
13 They can't say that they guarded everything, but at the same time
14 say these are incriminating. You would expect more. There has
15 to be more to convince you beyond a reasonable doubt of
16 willfulness with a bad purpose, of knowledge. They think Holy
17 Land is so careful not to talk on the phone but so completely
18 dismissive of being careful to give to Zakat Committees and
19 organizations that everybody knows are HAMAS. Doesn't make
20 sense. Totally contradictory. The government cannot have it
21 both ways. Mr. Abu Baker and Ghassan Elashi are worried about
22 even sending letters on behalf of Marzook because everybody you
23 know -- But they are going to put their entire business in
24 jeopardy by giving to Zakat Committees that are publically and
25 unequivocally identified with HAMAS? Not the case. Worried

1 about the Government of Israel all the time. Worried about
2 surveillance by the Government of Israel, even when it's legal to
3 give money, they are worried about the Government of Israel.
4 They know what happened overseas. That's the reason they swept
5 the office for eavesdropping devices. They think they are under
6 a microscope, but they are giving to Zakat Committees that
7 everybody knows are HAMAS. Doesn't make sense when they know
8 they are under a microscope. They are so concerned about talking
9 on the phone -- If it's so perfect, what's these calls about
10 suicide bombings? Again, Mr. El-Mezain doesn't make any nor
11 receives any.

12 I want to talk a little bit about some of the things
13 the government put in the case that are a red herring, that
14 distract you and to show you that the government knows it doesn't
15 have a case, but they have to put these things in and spend time
16 on them. The letter from the nut, Sultan Mahmoud. The direct on
17 Agent Burns and redirect. In the limited time they had in
18 summation, they decided to bring that out again. A Xerox
19 signature from a crackpot. That's their case. It would be
20 laughable if there weren't so much at stake for Mr. El-Mezain.
21 It would be laughable that you should rely on it beyond a
22 reasonable doubt.

23 Look at 2-138, one with very little writing, the second
24 testimony of Agent Burns, and it had to do with martyrs. You see
25 it says martyrs. Money going to martyrs for Holy Land. She

1 underlines shahid, shahid. What we found on Page 2 is half of
2 them were martyrs -- a massacre -- that were mowed down while
3 praying. She acknowledged that. What does the term "martyr"
4 mean? And what is the government trying to do when they don't
5 give you the full story? You don't need details, names. Don't
6 worry about that. Trust us. We know the rest of the picture.
7 We tell you this is the picture.

8 Aid to special segments. Everybody gives aid to the
9 same people, prisoners and martyrs and the needy. Did they prove
10 to you a single suicide bomber and his family who got Holy Land
11 support? They said it, but they don't prove it.

12 The deportees. Mr. Abington said the deportees, the
13 U.S. government had their names in 1992 to vet them, run them
14 through. No one was designated except for Rantisi. And the CIA
15 investigated them. That's what Mr. Abington told you. The
16 organizations weren't designated here. Not everybody self-ID'd
17 as HAMAS in that video we saw. The deportees condemned by the
18 international community. UN resolution, that's in evidence.
19 They represented all segments of Palestinian society and were
20 supported by all segments of Palestinian society. It was a
21 lightening rod for support because of the outrageousness of the
22 deportation, and it was three years before a designation, too.

23 The government talks about this July 30, 1992 telephone
24 call from Mousa Abu Marzook to El-Mezain for one minute. That
25 means no phone call at all. Look at the conversation. It takes

1 longer to say hello if you are an Islamist. They couldn't put
2 any of that together, that Holy Land's money had anything to do
3 with anything violent. Money went through Israeli banks.
4 Documents in evidence, Government's Exhibit 238 and 239 --
5 nothing to do with El-Mezain. They couldn't prove a
6 conversation. This is what they have to rely on, but they have
7 nothing, and it would be laughable if there weren't so much at
8 stake for Mr. El-Mezain.

9 Now, the Islamic Relief Committee was shut down by
10 Israel in 1996. Mr. Abington said it was an HAMAS organization,
11 but we didn't know who knew about it in 1995 or 1994. No
12 evidence with respect to that, that these defendants knew. It
13 was operating in Israel. You think the Israeli government would
14 let it operate in Israel? You think that can be relied on? They
15 didn't ask Mr. Abington when he learned it was a HAMAS
16 organization. Twenty thousand dollar check to Mr. El-Mezain.
17 Nothing wrong with it. You would have heard about it. They
18 cross examined the accountant, Mr. Yaish, about it. He said a
19 1099, 13-9 -- It was a 1099 issue that Mr. El-Mezain knew he had
20 to pay taxes on. You would know if that wasn't so. It would be
21 in here. Look at the conversation on Page 3. Shukri says "I
22 asked for information from the Holy Land offices." Shukri made a
23 decision of how much money. That's why Omar Ahmad is calling.
24 How much? You tell me. That's the type of call, not anything
25 about the fundraising. 1991, one thing about thousand dollars a

1 month. Thousand dollars a month for ten years of working, if he
2 was -- He was very valuable fundraiser, and Shukri said "We want
3 to keep him in the fold. We want to say this is to keep you in
4 the fundraising team." He can go other places. He has expenses,
5 moving to San Diego, opening an office in San Diego and moving
6 his entire family there, and he has expenses. I have to address
7 some of these red herrings because I don't know if Mr. Garrett
8 will have some. I know Mr. Jonas had some. They don't belong in
9 this case, but they show you how weak the proof is that they have
10 to rely on. The Islamic Action, I can go on, but I can't because
11 I'm limited in time.

12 I know you have paid attention. I also want you to
13 remember that none of these defendants have been designated, and
14 if you look at the Treasury exhibits, 11-5 and Defendant's
15 Exhibit 11-11, it's a very low standard. Reasonable cause to
16 designate someone for an organization. It's like sea level.
17 It's like Mount Everest. That's the difference between the two.
18 They haven't even gotten to reasonable cause with Mr. El-Mezain.

19 Dr. Levitt said there are not enough hours in the day
20 to designate people. Well, from July 31 -- I'm sorry. January
21 23rd, 1995 to July 30th, 2007, they designated thousands of these
22 organizations. We have the documents. It was time, just not
23 proved. Not even reasonable cause.

24 Cross examination of Mr. Abington. Do you think for a
25 second if the United States Government or the Israeli Government

1 thought that people were at risk because Holy Land was giving
2 money to these Zakat Committees that that information would not
3 have been communicated to Mr. Abington who was the United States
4 representative to the Palestinian Authority? Do you think for a
5 second the Zakat Committees and organizations would be permitted
6 to operate for another second if people were at risk? Holy
7 Land's money was supporting --

8 THE COURT: Mr. Dratel, your time is expired.

9 MR. DRATEL: Your Honor, if I may borrow a minute from
10 my cocounsel. I have half a page.

11 THE COURT: I'll give you another thirty seconds.

12 MR. DRATEL: The government wants to shout the word
13 "terrorism" to you so that you will throw out your common sense,
14 but the Court will instruct you that it would be improper to
15 consider feelings about an individual's race or national origin,
16 is one of those rules. The reason for that burden is the highest
17 under the law: The fear that an innocent man will be convicted
18 wrongly. A person's freedom is that important. Keep these
19 rights in mind when Mr. Garrett speaks again. I won't have the
20 opportunity. You can take up that task then and when you
21 deliberate --

22 THE COURT: Mr. Dratel, your time has expired.

23 Ladies and Gentlemen, we'll take our mid-morning recess
24 at this time.

25 THE COURT: Ms. Cadeddu, it's been represented to me

1 that you have yielded a minute of your time to Mr. Dratel so that
2 he can finish up. Is that right?

3 MS. CADEDDU: Yes, your Honor.

4 THE COURT: Mr. Dratel, go ahead.

5 MR. DRATEL: Thank you, your Honor. You are all that
6 stands between Mr. El-Mezain and justice. I'm confident that you
7 if you evaluate the evidence and apply the legal principles, you
8 will find him not guilty of each and every count against him in
9 this indictment. Thank you very much.

10 THE COURT: Mr. Cadeddu.

11 MS. CADEDDU: There was one witness in this case, one
12 witness only, who testified from personal knowledge about what
13 Mr. Mufid Abdulqader did and didn't do for the Holy Land
14 Foundation. One witness who had firsthand knowledge, both Mr.
15 Mufid Abdulqader singing with the band and his volunteer work
16 with the Holy Land Foundation. The witness with personal
17 knowledge of the facts that was so credible and considered so
18 important by the government that he was interviewed six times and
19 put on the government's witness list to be available to testify
20 at trial. That witness, of course, is Mr. Mohammed Wafa Yaish,
21 the Holy Land Foundation accountant and also Mr. Mufid
22 Abdulqader's personal accountant.

23 As Mr. Mufid Abdulqader's personal accountant, Mr.
24 Yaish had copies of Mufid's personnel records. He knew his
25 salary as an engineer for the City. He had being access to all

1 his records for the band. Mr. Yaish himself has probably seen
2 Mr. Mufid Abdulqader perform twice, once at a wedding and another
3 time at an HLF function in Dallas. As I think he said, the only
4 member of the Holy Land Foundation accounting department, Mr.
5 Yaish, also had firsthand knowledge of the financial operations
6 of the Holy Land Foundation itself. He set rules for financial
7 record keeping. He accounted for money that came in and where it
8 went. He knew the employees in Dallas, and he also knew the
9 employees and had conversations with the employees overseas. Mr.
10 Yaish knew and he told you about the roles of the volunteer
11 fundraisers for the Holy Land Foundation. Told you that he knew
12 how much each of those people had raised. He had direct personal
13 knowledge of Mufid Abdulqader's volunteer fundraising work both
14 for the Holy Land Foundation and also for other organizations in
15 Dallas like mosques and schools.

16 Now, Mr. Yaish's testimony, as you will recall, about
17 Mufid Abdulqader's involvement in this case with Holy Land
18 Foundation was pretty clear. I asked him what Mufid Abdulqader's
19 role was at the Holy Land Foundation, and he said he was an HLF
20 volunteer. He explained that most of the time Mufid's work was
21 as a volunteer fundraiser. Someone who will go out and give
22 speeches and collect money at fundraisers and mosques and other
23 places. Sometimes he manned telephones during telethons. You
24 heard from him that there were approximately twenty to thirty
25 volunteer fundraisers that HLF could call on at any one time to

1 go out and do this volunteer fundraising that he talked to you
2 about and that Mufid Abdulqader did. And you saw the list,
3 Government's Exhibit 121, Page 2, that lists some of those
4 volunteer fundraisers.

5 Now, Mr. Yaish testified as well about Mufid
6 Abdulqader's singing role with the band. He testified that as
7 Mr. Mufid Abdulqader's tax accountant he knew the band performed
8 at fundraisers and other events and that the band was hired by
9 organizations other than HLF and HLF to perform at functions. He
10 also testified, as you recall, that the band was hired to perform
11 at about six or seven weddings a year, hired by individuals to
12 perform at those ceremonies.

13 When you are thinking about Mr. Yaish's testimony, I'd
14 like you to take a look at the Court's instruction on
15 credibility, and we're going to take a look at that now together.
16 That instruction explains to you what factors you should consider
17 when assessing the credibility of witnesses. One of those is the
18 relationship of the government with the defense, and that is a an
19 important criteria for assessing Mr. Yaish's credibility. As you
20 recall, Mr. Yaish was speaking both with the government and with
21 the defense voluntarily. He met with the government six times.
22 He met with the defense attorneys I think three or four times.
23 He was open, truthful and cooperative during these meetings, and
24 that's something that would help you in assessing the fact that
25 he's a credible witness. Mr. Wafa also had personal knowledge of

1 what he was testifying about. Unlike the Government's witness,
2 Mr. Wafa Yaish was actually there at Holy Land Foundation, and he
3 actually looked at Mr. Mufid Abdulqader's personal financial
4 records.

5 I want to turn for a second to the charges that the
6 government has to prove in this case. Let's talk about what the
7 government needs to prove to you beyond a reasonable doubt for
8 you to be able to convict Mr. Abdulqader of the charges in this
9 case. Mr. Abdulqader is charged in every count of the
10 indictment, except for the tax counts. Those include Counts 1
11 through 32. He's charged in Count 1 with having conspired to
12 provide material support and resources to a terrorist
13 organization, HAMAS, and in Count 2 actually providing material
14 support, and those involve wire tranfers from Holy Land's bank
15 accounts to Zakat Committees between August of 1988 to 2001. The
16 next set begin with Count 12. Mr. Abdulqader is charged in Count
17 12 with having provided goods and services to HAMAS and charged
18 in Count 21 with actually providing those and the basis for that
19 is wire tranfers and money sent from Holy Land Foundation bank
20 accounts to Zakat Committees.

21 In Count 22, he's charged with conspiring to commit
22 money laundering. And in Counts 22 through 32 he's charged with
23 actually laundering those funds, and those counts refer back. 22
24 through 32 are the exact same wire tranfers as are the basis for
25 Counts 12 through 21. All of these counts relate to wire

1 transfers from Holy Land to the Zakat Committees in the
2 Palestinian Territories, and I am going to come back to that in a
3 minute.

4 With that as the background, let's talk about what
5 evidence -- what actual evidence the government brought here to
6 prove those charges against Mufid Abdulqader. As I counted, the
7 government says exhibits that they put in evidence that make any
8 mention of Mufid Abdulqader -- they include eleven paper
9 documents, tapes and transcripts of three wire-tapped
10 conversations out of I think three or four years of wire taps
11 that were on his phones and parts of thirteen video tapes. I
12 think I got them all. I tried not to miss any.

13 Let's talk about the eleven documents. You are going
14 to have piles of documents back there to look at while you are
15 deliberating. You are going to get all the documents that came
16 in evidence in this case. The documents that make any mention of
17 Mufid Abdulqader are a stack of eleven, and let's talk about what
18 those are.

19 First is Government's Exhibit 121 which is the local
20 fundraiser list that we already talked about. The second is an
21 Al Najoon invoice. I believe you will recall the testimony about
22 this invoice. This shows the band performed in Charlotte in
23 September of 1998, and you will remember that Mr. Yaish testified
24 that -- or rather up here, that this address is the address of
25 Mr. Munser Taleb, who was managing the band at that time before

1 Mr. Mufid Abdulqader began managing it in 2000. Mr. Yaish
2 explained to you this invoice shows both travel expenses, and
3 also down here, this three hundred dollars that you see, that's a
4 three hundred dollar fee per person for the band to perform, and
5 that was typical, as he told you, of the way the band got paid.

6 Now, some other exhibits that we have -- and I'm not
7 going through those because we looked at them before, but I'll
8 mention them -- are copies of checks to Mr. Mufid Abdulqader for
9 fundraising expenses and sometimes reimbursement of airline miles
10 and volunteer bonuses. Those are all things the HLF gave money
11 to Mr. Mufid Abdulqader for. The government put those in, and
12 those are some of the eleven documents, actually four of the
13 eleven that you have before you. The government also introduced
14 travel itineraries, and those travel itineraries were put in
15 evidence to show that he did volunteer fundraising in other
16 cities for the Holy Land Foundation.

17 Another document that mentions Mufid Abdulqader is
18 Government's Exhibit 5-28 which is an American Express bill that
19 shows travel expenses for band members Mufid Abdulqader and
20 Munser Taleb. I want to talk about this one a little more
21 because this is the document that the government used to suggest
22 to you that Mr. Mufid Abdulqader was lying during his interview
23 in 2002, which was simply not true. You may recall earlier in
24 this case Agent Burns testified about what Mr. Mufid Abdulqader
25 said in his April, 2002 interview. In fact, I have that for you.

1 And she was asked whether Mr. Mufid Abdulqader first began to
2 work, when he told Agent Burns that he first began to work with
3 the Holy Land Foundation, and she said he said after he moved to
4 Dallas in 1995, and then she talks about how he said he was a
5 volunteer and he raised funds on occasion for the Holy Land
6 Foundation. Now, the government throughout this case has treated
7 the singing -- Mr. Mufid Abdulqader's singing and performing with
8 a band as the same thing as fundraising, as the volunteer
9 fundraising he did for the Holy Land Foundation. Even yesterday
10 Mr. Jonas said and I think this is a quote as best I can get it.
11 As early as 1990, we know that Mufid Abdulqader was raising money
12 for HLF, and this is based on this Government's Exhibit 5-28 we
13 just talked about. But the evidence and testimony in this case
14 show that Mufid Abdulqader was a singer with the band that was
15 hired not only by the Holy Land Foundation but also by other
16 organizations for all kinds of functions. Agent Burns told you
17 that there was a lot of discussion. You remember that? I asked
18 her about whether it was in her report. A lot of discussion
19 during the interview about the band and what it did and where it
20 performed. Mr. Mufid Abdulqader didn't try to hide that from
21 Agent Burns. He talked about the band and the work of the band
22 and the volunteer fundraising for the Holy Land Foundation as two
23 distinct things. What we have here and I don't know -- I raised
24 this just because I don't get a chance to talk to you again. Mr.
25 Garrett may come before you tomorrow and tell you this was a lie.

1 But it wasn't a lie. It's just a difference of definition. The
2 government defines singing with the band as fundraising, and Mr.
3 Mufid Abdulqader made a distinction between those two things
4 during his interview. He didn't lie during the interview. He
5 was perfectly truthful. In fact, even Mr. Yaish during his
6 testimony made the same distinction. He testified -- Now, did
7 Mr. Mufid Abdulqader singing with the band have anything to do
8 with the fundraising he did for the Holy Land? He answered "No,
9 ma'am." What was the relationship of the Al Najoon band to the
10 Holy Land Foundation? Mr. Yaish said the Holy Land Foundation
11 will contract with them to perform at special events.

12 Now, I just want you to think as you are thinking about
13 this, and if the government tries to tell you about the fact that
14 this was a lie during his interview, I want you to think about
15 this instruction the Court is going to give you. When two people
16 are at the same event or interview, they sometimes have different
17 recollections of that event. That doesn't necessarily mean that
18 anyone is lying. It's normal. And this instruction tells you
19 that is very common and not a basis for you to conclude that Mr.
20 Mufid Abdulqader was lying during his interview.

21 Now, on a related note, the government introduced
22 Government's Exhibit 1-340. That document, as I recall, was a
23 list of people who had fundraised for HLF, cities and dollar
24 amounts. It was a big thick document. And then if you recall, I
25 think it was Agent Miranda said the government ran this in

1 alphabetical order as well, and we put that in evidence as 1087.

2 I am going to use that version because it's in order and easier

3 to talk about. Now, the Court has tried to tell you that Mufid

4 Abdulqader was a top fundraiser for the Holy Land Foundation.

5 That language even appears in the indictment. "A top

6 fundraiser." But as Mr. Yaish told you, Mr. Mufid Abdulqader was

7 one of twenty or thirty volunteer fundraisers the Holy Land

8 Foundation sometimes called on, and in fact, he was average.

9 That was the word he used.

10 Going back to Defendant's Exhibit 1087 which is the

11 list, that list shows money that was raised by different people

12 for the Holy Land Foundation and Agent Miranda testified about

13 it. He testified this list shows from August of 1997 through

14 August of 2000 Mr. Mufid Abdulqader raised \$114,194 for the Holy

15 Land Foundation. And in fact, those listings take up exactly two

16 pages -- I thought I tabbed it, but I guess I didn't. Take up

17 two pages in this list. Here we go. Take a look at that. You

18 see the bottom of 212. There are a couple of listings, and then

19 we have Page 213. You see some money being raised, brought in,

20 and then there is a half a page on Page 214. Now, take a look at

21 the document. Let's take a look at the first person on this big

22 list who's Mr. A. Idris. Mr. Idris is also coincidentally the

23 first person who appears at the top of the volunteer fundraiser

24 list that's Government's Exhibit 1-121. Rather Defense 1087

25 which is, as we know, the same as Government's Exhibit 1-340 but

1 in alphabetical order contains page after page of money raised by
2 Mr. Idris. I believe actually thirteen pages -- thirteen pages
3 of money raised by Mr. Idris, another volunteer fundraiser on the
4 list. Mr. Idris actually raised -- He raised money by himself
5 and on other occasions with other people. Money raised by
6 himself not with other people was \$165,000. Almost \$50,000 more
7 than Mr. Mufid Abdulqader raised. So there isn't any debate.
8 There is no difference of opinion about whether Mr. Mufid
9 Abdulqader was a volunteer fundraiser for Holy Land Foundation.
10 I don't debate that. That's absolutely the truth. But when the
11 government tells you that he was a top fundraiser -- he was the
12 top fundraiser -- it's not true, and the documents don't support
13 it.

14 One more document I'd like to talk about before I move
15 to the video tapes is Government's Exhibit 21-60. 21-60 is an
16 exhibit that the government talked about yesterday. Actually
17 yesterday was the very first time that the government even made
18 this statement or that any person made this statement. Yesterday
19 for the first time, from Mr. Jonas, you heard that Mr. Mufid
20 Abdulqader attended the Philadelphia meeting, and in support of
21 that -- No other witness testified to that. There was no
22 testimony about that. That was nothing we have heard the entire
23 trial. In support of that, he referenced a voided hotel receipt
24 which I am going to show you that has Mr. Mufid Abdulqader's
25 signature on the bottom of it. Now, this is the first time that

1 we have heard about this. The government introduced and has
2 talked about forever and a day the Philadelphia conference and
3 the transcripts of that conference. There are -- I don't know
4 how many transcripts there are, but the beginning of every one of
5 those transcripts which are in the 16 series contains a list of
6 the speakers, who was present. I am going to put this one also
7 in the stack of eleven documents. If we take a look together at
8 some, not all, because I think there are twenty-five -- twenty or
9 twenty-five transcripts of the Philadelphia conference, I am
10 going to show you just a few of those. This is Page 1 of
11 Government's Exhibit 16-37. Mufid Abdulqader's name does not
12 appear on this list as one of the attendees or the speakers.
13 Page 1 of Government's Exhibit 16-39, again his name doesn't
14 appear anywhere there. Government's Exhibit 16-47, not there.
15 16-49, name is not there. And so on and so on and so on and so
16 on for every single transcript of the Philadelphia meeting.

17 So the government has asked you a question -- I think
18 Mr. Dratel referred to this yesterday. The government has been
19 posing all of these questions why would this be the case if it
20 weren't for that? Well, the government has the burden of proof
21 here. That means something. They can't just put these questions
22 out there and not answer them and hope you assume the answer is
23 something they like. That does not meet the government's burden
24 of proof. The Court will instruct you that the government has
25 the burden of proof and that never shifts, never shifts to me. I

1 don't have to prove anything to you. The government has the
2 burden of proving -- Now, listen, there is nothing wrong with
3 attending a meeting and talking about politics. Nothing wrong at
4 all. It's protected by the First Amendment, and I will talk to
5 you about that in a lot more detail in a few minutes. There is
6 nothing wrong with it. It is protected. There is nothing
7 illegal about it. But if the government is going to say he was
8 there, they got to actually prove it. They've got to prove it.

9 Let's take a look at an excerpt from Government's
10 Exhibit 16-25. This is a conversation you saw early in the case
11 among some of the folks who attended the Philadelphia conference
12 and actually were involved in planning it. This was on Mr.
13 Ashqar's line. Now, we see a reference in here and what the
14 speakers are talking about and we see it here. They are talking
15 about limiting the number of participants in this conference or
16 in this meeting because otherwise it's going to become too
17 unwieldy, like a conference, and they don't want that because it
18 becomes difficult to hear everyone's viewpoint. And then there
19 is a reference to a forum or a conference. "What we want is a
20 session, I mean. A session, a session or two, especially that
21 they will be coming from the festival, I mean." What this is
22 telling you, Ladies and Gentlemen, is that at the same time the
23 Philadelphia meeting was going on there was a festival, a
24 cultural festival of the kind that Mr. Mufid Abdulqader performed
25 in, as you have heard and seen from the evidence. The government

1 knows perfectly well that Mr. Mufid Abdulqader was not at the
2 Philadelphia meeting, and there is zero evidence to support that.
3 A voided hotel receipt and list after list after list of
4 attendees that don't show his name and photographs where he
5 doesn't appear. That does not constitute proof. This is just an
6 attempt by the government to make Mr. Mufid Abdulqader be more
7 important to this case than he actually is.

8 Now for the part of my argument that everybody is
9 waiting for. How am I going to explain those video tapes? Guess
10 what? I don't have to. I don't have to. The First Amendment to
11 the United States Constitution means something. If it means
12 anything, it means that you can talk, you can sing, and you can
13 perform in skits about anything you like. The Court will give
14 you this instruction, and I will read it to you because it is so
15 very important. "The First Amendment to the United States
16 Constitution provides Congress shall make no law respecting the
17 establishment of religion or prohibiting the free exercise
18 thereof or abridging the freedom of speech or of the press or the
19 right of people peaceably to assemble and to petition the
20 government for a redress of grievance." This amendment
21 guarantees to all persons in the United States -- all persons --
22 the right to freedom of speech and freedom of religion and
23 freedom of association. Because of these Constitutional
24 guarantees no one can be convicted of a crime simply on the basis
25 of his beliefs, his expression of those beliefs or his

1 associations.

2 Yesterday, you heard Mr. Jonas say Mr. Mufid Abdulqader
3 isn't on trial for what he was saying. You heard that. That's
4 right. He isn't. He can't because of this right here. Let's
5 think back to his argument and what he actually said. Yesterday,
6 Mr. Jonas played video tape after video tape after video tape
7 after video tape of songs and skits, and in fact, he played the
8 same skit twice. It was two versions of the same skit, although
9 actually he didn't play the whole skit, as I recall. He just
10 played the part at the end. Didn't play the middle of it. I am
11 going to put this up here to remind you what we're talking about
12 here. This is one of the two skits that we're talking about.
13 Now, even though I don't have to explain this because, as you
14 know and you will see from the instruction that you will have
15 with you, speech is protected by the First Amendment. I don't
16 have to explain these skits. Mr. Jonas did something that I
17 referred to a minute ago that I can't let pass. He showed you
18 just the end of these skits, just that part where the two actors,
19 Mr. Mufid Abdulqader and the guy playing the Zionist, where Mr.
20 Mufid Abdulqader symbolically kills the Zionist. Showed it to
21 you twice from two videos. And then just to go back for a
22 second, a Zionist as we have learned in the course of this case
23 is just the historical term for someone who believes in a
24 homeland for Israel. That's what a Zionist is. A Zionist in
25 this case is the equivalent of Israel. Now, Mr. Jonas said to

1 you Mr. Mufid Abdulqader says "I am HAMAS." What could be
2 clearer? What could be clearer than that? Well, let's start
3 with this premise. There is also the actor playing a Zionist.
4 Is he clearly a Zionist? Is what he says in the skit what he
5 actually believes? Is that what Mr. Jonas is saying? That actor
6 who says anything in a movie or someone who acts in a play is
7 advocating what is said? This was a skit, Ladies and Gentlemen,
8 dramatizing. And I'm not telling you here that Mr. Mufid
9 Abdulqader doesn't have strong feelings about Israel or the
10 Palestinians. That's not what I'm saying. What I am saying is
11 this is a skit dramatizing the relationship, the
12 Arab-Israel relationship. And at a time during this intifada
13 when there is all this emotion of Palestinians around the world.
14 All of this emotions because they are hoping that things are
15 going to change. The people have been under occupation for
16 decades. Something is happening. There is an uprising, and
17 organizations including HAMAS that are going to come out and
18 speak for the long suffering Palestinian people. That's the kind
19 of context for what we're talking about.

20 I am going to show you what the government left out
21 yesterday. Government's Exhibit 22-22 F is an excerpt of this
22 skit that we just had the picture of. I am going to talk about
23 it from over here. I don't know if you can see that. In this
24 skit -- In this skit Mr. Mufid Abdulqader is playing the part of
25 HAMAS, and he says, you see right here, "I protect my land,

1 Palestine, and you must leave." He's talking to the Zionist now.
2 Then the actor playing the Zionist says "HAMAS, this is a new
3 melody that you have not gotten used to it." What that actor is
4 referring to there is the fact that HAMAS is new. It's a new
5 organization. This is the first intifada, and it's something
6 that is creating some consternation in Israel. So it's putting
7 this in a time frame. The Zionist then says "I am the known
8 Zionist, and my situation is known in the world. I am the known
9 Zionist, and my situation is known in the world. I must take
10 over Palestine and make it Israel."

11 So what the Zionist is saying there is that he is
12 talking about how Israel wants to take over the Palestinian
13 Territories and make it all Israel and that Israel is counting on
14 the support of the world to allow it to do that.

15 There is a discussion here, an argument between the
16 parties. I can't go through the whole thing, but they talk about
17 who's stronger, who's going to win in this disagreement, and then
18 the HAMAS character played by Mr. Mufid Abdulqader says "As many
19 as you kill of the children, elderly and women, and the people of
20 Palestine do not die. No matter how many you kill, Oh pimp, the
21 people of Palestine do not die."

22 And so what we're talking about is giving voice to
23 what's going on, what people in the United States are seeing on
24 TV about what's actually happening in Palestine and talking about
25 in Palestine in a skit, what's going on and people's feelings

1 about what's going on. And then down here at the bottom, the
2 Zionist says, "This is not your land. This is our land." And
3 they say Yehuda and Samarah. "The abundant land of my
4 forefathers. And the world knows its history from American to
5 Berlin."

6 In this segment the Zionist character is making a
7 reference to Judea and Summaria and talking about how the world
8 will support Israel as it takes the Territories over. And
9 Dr. Brown told you, those are the Arab terms as we have learned
10 for Judea and Summaria, and those are references to the ancient
11 Kingdom of Israel which reached from the sea to the Jordan River.
12 What that means is that Israel at least as the Palestinians see
13 it in the skit is wanting to have all of Israel from the sea to
14 the river, leaving no place for the Palestinians and no homeland
15 for them. This is a dialogue between two characters, two people
16 playing roles, talking about the intifada. The Zionist character
17 later says "The sling will not get me out, nor the stone that is
18 thrown on me." And these are references to what's going on at
19 this time. The HAMAS character responds "This is your work.
20 Against who are you using your tanks and cannons? Against
21 unarmed people and children. The innocent people. This is your
22 work, oh, Coward, the killing of the elderly and women." And
23 then he says "When do we return to our land and complete our
24 happiness." And then, yes, the HAMAS character played by Mr.
25 Mufid Abdulqader symbolically kills the Zionist. This Ladies and

1 Gentlemen is political speech. This is what the First Amendment
2 was designed to protect, right here. The First Amendment reaches
3 it's highest zenith, highest level, when it's protecting
4 political speech, and that's what we have here and what the
5 government is trying to criminalize.

6 Another point on the video tapes themselves, all of
7 them -- I think twelve or thirteen of these video tapes, these
8 are clips that show Mufid Abdulqader in some form or another.
9 There are thirteen of them that I was able to determine. All but
10 one of those dates from the early 1990's or even before in the
11 late 1980's. A couple of them are undated, and Mr. Jonas told
12 you admitted yesterday that they are old. Don't forget it's the
13 government's burden of proof. These videos are all predating the
14 designation of HAMAS with one exception, and he talked about that
15 yesterday. That was 1-315, and that tape, as you recall -- I'm
16 not going to show it to you because we don't have time, but that
17 tape shows Mufid Abdulqader reading from a piece of paper.
18 Remember where he stands up and reads it, and he says the women's
19 community sends greeting to Sheikh Yassin and Rantisi. And what
20 the first instruction tells you is it is never illegal -- it is
21 always protected -- to talk about whatever political thing you
22 want to talk about. You can talk about terrorist organizations.
23 You can talk about terrorists. The designation of HAMAS did not
24 change that. It's legal today. I could stand here -- In fact, I
25 am standing here. I could stand on the street corner and talk

1 about HAMAS. We can all say we love what HAMAS is doing. We
2 advocate whatever we want to advocate. That is free speech, and
3 that's what's protected.

4 Now, I just want to go back one second to the very
5 famous buried video tapes in Fawaz Mushtaha's backyard. The
6 government throughout said why did he bury them if they weren't
7 incriminating. You saw them. You know from the instruction that
8 what's on them is protected. I'll tell you why he buried them.
9 Because he was afraid he was going to end up right here being
10 prosecuted for his political speech. That's why he buried them.
11 Let's take stock of the evidence we have talked about so far. We
12 have learned from the government's eleven documents and these
13 thirteen video tapes that we have discussed today that Mr. Mufid
14 Abdulqader was a singer with a traditional ethnic Palestinian
15 band that was hired to perform at conventions, fundraiser and
16 personal celebrations like weddings around the country. This was
17 a hobby for him. We know it was a hobby for him really from when
18 he first moved to this country. When he was studying for his
19 engineering degree in Oklahoma, studying for his masters, while
20 he was getting married and having children and moving to the City
21 of Dallas to work as an engineer he was engaged in this hobby of
22 singing in the band. We know that the Holy Land Foundation was
23 one of the organizations.

24 THE COURT: Ten minutes remaining.

25 MS. CADEDDU: Thank you, sir. We know that HLF was one

1 of the organizations that hired the band as early as 1990. We
2 know from the video tapes, as we talked about, that tensions were
3 running pretty high in the late 80's and early 90's. There was a
4 lot of hope that HAMAS was the answer at that time. We have
5 learned sometime in the mid-1990's when Mufid moved to Dallas to
6 take a job with the City of Dallas he began volunteering for the
7 HLF and other organizations. He raised money for the Holy Land
8 Foundation on his own time as a volunteer fundraiser. I also
9 told you in opening -- and I just want to make this clear -- that
10 even Israel supported -- We're talking about Palestinians
11 supporting HAMAS. In the early days, even Israel supported
12 Islamic institutions in the early days as a counterweight to the
13 PLO, the secular nonreligious organization. I believe Dr. Levitt
14 told you about that. What have we not heard? We have not heard
15 anything relating to the charges in the indictment. We haven't
16 heard any evidence that Mr. Mufid Abdulqader acted willfully;
17 that is, as you will see in the instructions, with specific
18 intent to disobey or disregard the law. You have heard nothing
19 about that. You haven't heard any evidence that he willfully
20 conspired to fund HAMAS by making wire tranfers to Zakat
21 Committees out of HLF bank accounts. As Mr. Yaish told you,
22 Mufid Abdulqader was not an HLF employee. He didn't have a desk,
23 a phone, an e-mail address. He didn't decide where the money
24 went. He didn't have access to the financial records, the
25 computers. He could not write checks. He could not make wire

1 transfers. All he did was act as a volunteer fundraiser, as did
2 every other volunteer fundraiser, to donate his time and money to
3 an organization he believed was feeding and helping hungry,
4 destitute people in the place where he was born. Mr. Mufid
5 Abdulqader's name doesn't appear on any telephone list -- not on
6 Marzook's list, not on the Palestine Committee list. Doesn't
7 appear in the Palestine organization chart. Not on any
8 incorporation document for HLF or any other organization you saw
9 in this case.

10 So if he is in fact -- if he was in fact one volunteer
11 fundraiser out of twenty or thirty that the Holy Land Foundation
12 used, one band member out of the eight or ten we have seen
13 performing at any time, what has the government given you to show
14 that he's any different from anybody else? Why is he here? Why
15 do they think he's guilty? There is why. There is why, because
16 his half brother is the specially designate terrorist Khalil
17 Mishal. That's why. He's related to a bad guy.

18 Now, maybe when you heard about the fact that he was
19 the half brother of Khalil Mishal in opening statements you
20 thought you might hear about some contacts between Mufid
21 Abdulqader and his brother, meetings or telephone conversations
22 or some sort of conspiratorial something, anything, something
23 more than a brother relationship you heard about, something from
24 the audio tapes and the conversations, the three of them. These
25 go with the other things the government has brought to you. Go

1 in the stack. Perhaps more than him wishing for Khalil Mishal's
2 wife to have patience in the face of adversity or talking to his
3 friends and family about how he hoped his brother would live
4 after the poison attack. Now, you can be sure with the resources
5 this government has and the cooperation it has had with Israel
6 and all the investigative resources the government has if there
7 was something, some evidence of some sort of interaction between
8 Khalil Mishal and Mufid Abdulqader, you would hear about it. You
9 would have heard about it. What did the government give you?
10 The best they could give you was who better to trust than family.
11 Now, a cliché is not proof beyond a reasonable doubt. If you
12 don't believe me, ask Mr. Jacks. He told you about it in
13 opening. He said now does that make them guilty of these
14 charges, the fact that they have relatives? Of course not. He
15 knows that's what the law says. But it's something you are
16 entitled to know to inform you when you make your decision, and
17 that evidence will be presented for you to consider along with
18 the rest of it. Why does he want you to consider it? If you
19 can't convict somebody for it, why does he want you to think
20 about it? He wants you to think about it so that you will hold
21 Mr. Mufid Abdulqader responsible for his brother.

22 When I talked to you before, I made some promises about
23 what the evidence would show, and I hope I have kept those. I
24 think I have. And I told you that some of the government's
25 evidence would fall into the category protected by the First

1 Amendment. That's still true today. The First Amendment
2 protects our beliefs, our right to express our beliefs even if
3 the feelings are strong -- the Israelis, the Palestinians, the
4 conditions they live in. The First Amendment protects our right
5 to worship as we please, including volunteering for an
6 organization that sends food to the hungry. The First Amendment
7 protects our right to associate with whom we please. A step
8 back. The First Amendment protects first and foremost our right
9 to express our beliefs and our right to worship, and it protects
10 our right to associate with whomever we please which I hope and
11 believe includes the right to hope that one's half brother lives
12 to see another day. The government has the burden of proving to
13 you beyond a reasonable doubt that Mufid Abdulqader did what is
14 charged in the indictment. What is charged in the indictment,
15 Ladies and Gentlemen, not that he sang songs and performed skits
16 that talk about HAMAS years before HAMAS was designated and years
17 before HAMAS considered a single terrorist act. The government
18 doesn't have any such proof. They don't even have reasonable
19 cause to put Mr. Mufid Abdulqader on the designated terrorist
20 list. They didn't even have that quantum of proof. You have
21 heard all the evidence, and there isn't much on Mufid Abdulqader,
22 just this little stack here, and in fact, this big stack, as I
23 told you, two pages of this -- two pages of this document relate
24 to Mufid Abdulqader. So what we're really talking about is this
25 right here and thirteen of these. I will not have the chance to

1 talk to you again to respond to Mr. Garrett's argument. I tried
2 to anticipate some of those, but remember nothing he says can
3 change what Mr. Yaish said. Nothing he says can change the fact
4 of this little tiny stack of documents over here, and nothing he
5 says can change the fact that all of these video tapes were
6 filmed years and years ago in a completely different world than
7 we live in today and that every one of those video tapes is pure
8 speech protected by the First Amendment. Please, please resist
9 the government's invitation to punish Mufid Abdulqader for the
10 sins of his brother. The evidence and not prejudice mandates
11 only one just verdict in this case, and that verdict is not
12 guilty on all counts of the indictment.

13 THE COURT: Ladies and Gentlemen, although it's a bit
14 earlier than we normally break for lunch, I think this is a good
15 time to take our midday recess. Please remember to observe the
16 instructions I gave you regarding your conduct as jurors while
17 we're apart for lunch. We'll be in recess until 1:15.

18 (Recess)

19 THE COURT: Good afternoon, Ladies and Gentlemen.
20 We'll hear next for Mr. Westfall, counsel for Mr. Odeh. Mr.
21 Westfall, do you want any warnings about your time?

22 MR. WESTFALL: A ten-minute warning. And also Ms.
23 Moreno has said if I do run over she would give me up to ten
24 minutes. So I have a ten-minute warning on my own time. Would
25 you please flip it over to the defense computer?

1 THE COURT: Yes, sir.

2 MR. WESTFALL: Good afternoon, Ladies and Gentlemen. I
3 am going to speak for Abdulraham Odeh. This has been a long
4 case, and I want to join everyone who has spent the time. We
5 have set a record for both of us. We have now reached the part
6 where you all get to make a very important decision in everyone's
7 life, and one thing I want to stress, a couple of areas of law
8 that I want to first talk about before we get into the case.
9 Number one is separate consideration. Each defendant in the case
10 is entitled to separate consideration of his culpability.
11 Everybody in the case will have a separate verdict form. It will
12 be multiple pages, but every person has a separate verdict form,
13 and that will underscore how everyone will get separate
14 consideration, and that's the only way that anything can happen
15 with any semblance of fairness in the criminal justice system.
16 We're all judged by our own acts, and the criminal justice system
17 is no different.

18 The second thing is the burden of proof, of course.
19 The government has the burden of proof from beginning to end, and
20 the burden never shifts. Do you all see the screen from where
21 you are? Along with the burden of proof is the right of everyone
22 not to have to testify in their own trial. And you have been
23 instructed and we spoke about that in jury selection a little
24 bit. It's another cornerstone of our criminal justice system.
25 It would be so incredibly unfair if it weren't any other way. So

1 I wanted that to be on your mind as you get ready to deliberate.

2 The third thing with the burden of proof, the
3 presumption of innocence goes along with that. The only way to
4 overcome the presumption of innocence is for the government to
5 bring you proof beyond any reasonable doubt, and the Court will
6 define that as proof of such a convincing character that you
7 would rely upon it and act upon it without hesitation in the most
8 important of your own affairs. So you think what are the most
9 important of my affairs. Putting an elderly parent into a
10 hospice or into an assisted living home. Putting your child in
11 school. These are decisions, crucial decisions that we hold very
12 dear. But the type of proof that the law contemplates in every
13 criminal case, including this one, is that this proof be of such
14 convincing character that you would make a decision like that,
15 that you would act on that decision and that you would do those
16 things without hesitation. It's by far the highest burden in the
17 law, period. That's another one of our very fundamental
18 protections that we spent two hundred years trying to protect,
19 over two hundred years now.

20 The issue of knowledge and intent, there is a couple of
21 indications here for Abdulrahman Odeh for everybody but Abdulrahman
22 Odeh is who I am going to address. This is the conspiracy count
23 which you are looking at here. There is three of them. Several
24 substantive counts, money laundering. Every one of them has the
25 requirement of knowledge and intent. They call that knowingly

1 and willfully. Okay? Willfully with the intent -- with bad
2 motive. Sometimes evil intent but bad motive and intent. You
3 got to know what you are doing. You got to agree to what you are
4 doing. Basically the phrase is you can't guess someone to
5 guilty, you can't speculate someone into the penitentiary. You
6 all know that. There is a different between facts and
7 speculation. Facts is what we're concerned with when we're in a
8 criminal trial. Speculation is what we try to weed out. That's
9 what all of this does. That puts effect to those protections.

10 Fact, Holy Land Foundation gave money to Zakat
11 Committees. Speculation, the money went to buy guns, money went
12 to buy bombs, bullets. There is not a shred of evidence to show
13 that. What we're talking about here is pure dee one hundred
14 percent charity. That's the fact. Anything beyond that is
15 speculation. So the issue is like Mr. Jacks said. You know what
16 was on the defendant's minds when they gave money to these Zakat
17 Committees, state of mind. That's the fine line we're walking
18 when we talk about the 5th Amendment and the state of mind and
19 the First Amendment and the state of mind. So let's talk about
20 that.

21 Let's look first at Abdulraham Odeh and how he fits
22 into the Holy Land Foundation. We know that Abdulraham Odeh came
23 to work for the Holy Land Foundation February 1st of 1994. And
24 what did he do? Well, first thing he had to fill out weekly
25 reports. He had to -- He had to say how many hours he worked in

1 a week. He had to say how many times he called headquarters and
2 why he called headquarters, and we saw all of this during my talk
3 with Agent Burns, that he had to say what he did out in the
4 field, what his projects were. We know that he had to say how
5 many hours he worked out in the field and the fact that he had
6 coin boxes that he had to tend to and collect the coins out of
7 and place those coin boxes and then send that money down to
8 headquarters. We know that Abdulraham Odeh went to quarterly
9 meetings like all the other representatives and all the other
10 offices. Quarterly meetings in Dallas. And we know from
11 speaking with Agent Burns that Shukri Abu Baker had an American
12 Express card where he would purchase the tickets for Abdulraham
13 Odeh and others. Abdulraham Odeh didn't have a company credit
14 card or anything like that. Four times a year he went to
15 headquarters and had these meetings and duly reported it on his
16 forms. He also did conventions. This is the ISNA convention.
17 When he went to a convention. This is what he did. He set up a
18 booth like this one. Ms. Suleiman testified to that. And the
19 pictures and projects would be up on the booth and perhaps some
20 crafts and such. But he went to these conventions, and he sought
21 donations, sponsors for orphans, and showed off Holy Land
22 Foundation projects which you saw in the pictures while we were
23 talking to Ms. Suleiman. Yesterday, Mr. Jonas said that Odeh
24 opened the New Jersey office. Well, Odeh certainly worked in the
25 New Jersey office. He was the first employee at the New Jersey

1 office, but he didn't open the New Jersey office. These are the
2 documents right here in front of you that show who did. And of
3 course, it wasn't Abdulraham Odeh. And Abdulraham Odeh was an
4 employee, pure and simple. Abdulraham Odeh was not in the Muslim
5 Brotherhood. Abdulraham Odeh never met Marzook. Wasn't in the
6 Palestine Committee. He wasn't at the Philadelphia conference.
7 He wasn't incorporator for any of those early corporations. He
8 wasn't on the board of any of those early corporations that we
9 heard about. He wasn't an incorporator or board member of the
10 IAP. He wasn't on the board of Holy Land Foundation, never went
11 to a board meeting of Holy Land Foundation, had nothing to do
12 with the creation of a Holy Land Foundation or the OLF that
13 preceded it. Abdulraham Odeh never gave any speeches. He didn't
14 raise the most money. Keifa Mustafa outraised him four to one.
15 Never went to Palestine and dealt with any Zakat Committees.
16 Never dealt with any organizations in Palestine. Abdulraham Odeh
17 never signed a wire transfer. He never made a decision about
18 where to place an ad. He never made an executive decision during
19 his entire tenure with the Holy Land Foundation. Abdulraham Odeh
20 was the New Jersey representative of the Holy Land Foundation,
21 and he was a relief worker. I want to see in a second what the
22 evidence is that they have brought you to show that Abdulraham
23 Odeh ought to be a part of this case. Five hundred bankers'
24 boxes. Five hundred bankers' boxes of records and video tapes.
25 This is what they brought pertaining to Abdulraham Odeh: One

1 book. A pamphlet that was pre-1989. Another pamphlet that was
2 1991. A picture of Sheikh Yassin from 1990, and there is no way
3 to really tell where this was in his office, but you can see the
4 correspondence. There is no tack marks. It's not framed.
5 Another picture, this is that picture that -- I think this is the
6 only document that Agent Miranda spoke about pertaining to
7 Abdulrahman Odeh, and that's this guy when he is quite a bit
8 younger, a wadded up newspaper picture. We know that Abdulrahman
9 Odeh was in three intifada festival videos in the audience. And
10 those were certainly 1990 or thereabouts. That's pretty much it.
11 Oh, the Sultan Mahmud letter which has been discussed enough in
12 this trial. The man sends his letter with a twenty-five dollar
13 money order, and the only additional thing I can say is God help
14 me if I ever get judged by the letters that whackos have sent me.
15 This has no bearing whatsoever on Abdulrahman Odeh's state of
16 mind. Okay? Understood that there is nine years of FISA calls,
17 nine years of calls that were intercepted by the United States
18 Government. And those nine years of calls, we heard how FISA
19 works, that the language specialist makes a decision on what's
20 pertinent and what's not based upon what the agent tells him to
21 do. The pertinent cuts are made and then whatever comes into
22 court. There was five cuts involving Abdulrahman Odeh that came
23 into court. Three of those were calls where Abdul is calling
24 El-Mezain and telling him something is in the news. Heard this
25 on the news and called El-Mezain and said have you heard the

1 news. That's these three calls. January 22nd, 1995; March 3rd,
2 1996. And January 5th of 1996. January 22nd, 1995 is the phone
3 call where Abdul calls and says there has been a beautiful
4 operation about a suicide bombing, and I believe you heard it,
5 but you can take my word for it there is excitement in his voice.
6 There is. And that's the hardest thing in this case for us.
7 It's probably a big reason why Abdul is in this case.

8 A couple of things I want to bring up, and then I want
9 to discuss that call with you all a little bit. First, the news
10 is the news. This was news. This was heard around the world.
11 How Abdulraham Odeh or anyone else responds to the news is
12 something completely in his right. We don't go to war -- like
13 the war we're in now. We don't go to war to vindicate the right
14 to hear things we want to hear. Our First Amendment allows us
15 the ability to hear things we don't want to hear because it gives
16 us the ability to say things that we want to say. Second of all,
17 Abdulraham Odeh was in New Jersey when this happened. He had
18 nothing to do with the suicide bombing. He heard it on the news
19 with tens of millions of other people all at the same time. That
20 really doesn't explain the emotion. How could he be happy about
21 that? I have no experience parallel to what it must be like to
22 be a Palestinian. But that may be somewhere near where we need
23 to go. This call happened less than a year after Barouk
24 Goldstein went in that mosque and killed those twenty-nine people
25 who were worshipping on their knees. They were executed. After

1 that happened, the settlers erected a monument commemorating him.
2 Again a year later, they had a demonstration commemorating what
3 he had done. And how that looks through the eyes of a
4 Palestinian I think is the only way to begin to understand how on
5 January 22nd, 1995, Abdulrahman Odeh might be happy to see
6 something bad happen to Israel. I don't know that's a HAMAS
7 emotion as much as just a Palestinian emotion. I can only guess.
8 If seven hundred thousand refugees living in these camps for
9 three generations -- The Palestinians, you know, we can't settle
10 it. The Arab-Israeli conflict is way bigger than me. We can't
11 settle it. But after what we have seen, I think the Palestinian
12 people can look upon Israel as a bully that pretty much gets
13 whatever it wants. I can see the Palestinian side of that, and I
14 can see how on January 22nd, 1995, Abdulrahman Odeh would be happy
15 with this as caustic and corrosive as that emotion is and
16 unfortunate.

17 One other point. They killed Sheikh Yassin in a rocket
18 attack and killed ten or twelve innocent people when that
19 happened, and I doubt too many Israelis were sitting around
20 crying about that. There has been innocent people killed on both
21 sides, and it's tragic.

22 January 5th, 1996, the death of the engineer. By the
23 way, contrast that with the March 3rd, 1996, a year later,
24 basically he calls El-Mezain and says did you hear the news. No
25 happiness, no joy. January 5th, 1996, he makes another phone

1 call to El-Mezain and tells him the engineer has been killed.
2 Just heard it on the news. Think for a moment about who this man
3 was, this Yaish. He was almost like a folk hero to Palestinians.
4 Not HAMAS. Certainly they adored him. But Palestinians of every
5 stripe liked him. He could strike fear in Israel like no one
6 else. They had a year long man hunt trying to get this guy,
7 trying to kill him, and when they finally did, you know what? It
8 was news, and once again Abdulraham Odeh hears the news and calls
9 El-Mezain and tells him the news. But we know another thing
10 about the engineer. We know that Abdulraham Odeh sponsored his
11 youngest child as an orphan through Holy Land. We need to
12 discuss that. I'd like to set a couple of parameters here. One,
13 you are looking at the birth certificate for Bara'a who's the
14 older child of Yehia. Yehia was three when his father was
15 killed. What happened after his father was killed? He goes to
16 the Mercy Orphanage where he goes and stays with about a hundred
17 thirty other kids and gets forty-five bucks a month from the Holy
18 Land Foundation, and you can look at every single one of these
19 documents. As time goes by, as he stays in Gaza in an orphanage
20 and then as he goes into Nablus, he receives the exact same
21 amount as all the other kids, every single time. Mr. Avi said
22 that if you give money -- if you single out special segments for
23 aid, then you are HAMAS. You are rewarding them. And this kid
24 was not singled out for special treatment. He received the same
25 thing as all the other kids who are obviously not martyrs or you

1 would have heard that. But the analysis doesn't stop there,
2 according to Mr. Avi. Because if you don't distinguish between
3 special segments, give aid to everyone regardless of their
4 politics, then you are trying to win the hearts and minds of
5 Palestinian people and groom them for future suicide operations.
6 So the only safe route, the only way to really play it safe is to
7 not give aid to the Palestinians which I'm certain would be Mr.
8 Avi's choice. But I don't think that would be the right choice.

9 I want to look at the big picture for just a little bit
10 on this child. When this child, when his father was killed, this
11 child was a baby. And you know what? His father made choices
12 that got him killed. Okay? There might can be debates on either
13 side of the segregation wall as to who's more at fault or who
14 should have been at fault or how it should have been done. But I
15 tell you those debates would not include whether or not this baby
16 was at fault for anything his father did and for how his father
17 died, and I have seen the video tapes along with you of these
18 Palestinian women holding pictures of their loved ones and saying
19 "Thank God, Thank God my son was a martyr. Thank God, my husband
20 was a martyr." That's just great. You know what that is?
21 That's called steadfastness. That's called keeping a stiff upper
22 lip in the face of overwhelming adversity which is what steadfast
23 is. This small child who has no concept of jihad, who doesn't
24 understand what martyrdom is, who doesn't understand the concept
25 of occupation, this small child in his quieter moments at night

1 just wishing he had a dad -- Because they are human beings. They
2 are human beings and they feel pain, human beings feel loss,
3 human beings feel grief regardless of how steadfast they are.
4 This kid wouldn't have traded his dad for forty-five bucks a
5 month and a spot in orphanage, but if that's the best that he can
6 do, he ought to get it. He ought to get it.

7 One other thing about Yehia before we move on. Taking
8 care of an orphan has a special place in Islam. It has a special
9 station in Islam, and we have heard why. Mohammed himself was an
10 orphan, and Natalie Suleiman testified that she had an orphan and
11 didn't talk about it, and she didn't even know that Abdulraham
12 Odeh had an orphan let alone who his orphan was. Why? Because
13 that would be the Christian equivalent, the Muslim equivalent,
14 and it's all the same of carrying your alms before men. She said
15 it would reduce your reward. When you give alms, do not let your
16 left hand know what your right hand is doing and give in secret
17 and the follower who receives in secret will repay you. When we
18 feed you, we do this for the sake of Allah only. No repayment do
19 we desire, nor thanks. It's all the same which by the way really
20 highlights something the Judge said several times. Mr. Jacks
21 said to Natalie Suleiman, did you hear or did you know that he
22 traded one orphan for another? First of all, that's completely
23 repugnant to Islam just as it would be to Christianity.
24 Secondly, that's a good example of why the Judge has told you
25 over and over that the lawyer's questions are not evidence.

1 Religious obligation. What is the use of having a famous orphan,
2 quote unquote, if you can't brag about it. On January 25th,
3 1995, this child became a fatherless child who needed help.
4 There has been a document coming in evidence from the
5 headquarters in Dallas where the people in Gaza were saying, hey,
6 we forgot to send you the applications for the Yehia Yaish
7 children. Abdulraham Odeh never saw that. He sent his fifty
8 bucks a month. The September 12, 1999 phone call, that's the one
9 where Shukri and Abdulraham Odeh are talking about the Deeb Anees
10 situation. And you know I guess it's in evidence because Shukri
11 used the word "SAMAH," but remember how we went through it, Agent
12 Miranda and I, and from the big picture, from the zoom-out, what
13 Shukri is telling Abdulraham Odeh is don't take this man's money
14 because he has aligned himself with HAMAS. And you know what?
15 Abdul already knew that. He didn't have to be told. That right
16 there is real evidence of the state of mind. That is evidence of
17 the state of mind.

18 The 4-19-96 phone call, that's the one where Odeh calls
19 El-Mezain and says let's do something about Oklahoma. Let's do
20 something about the Oklahoma City situation. And yeah, it will
21 make us look good. Fine. And charities self-promote. Phone
22 calls that we don't have in here but we heard about though, by
23 the way, is when Egypt Air crashed, Abdulraham Odeh calls Shukri
24 and says we got to do something about this. And when they have
25 two earthquakes in Turkey, Abdulraham Odeh calls Shukri and says

1 we got to do something about this. He was supposed to go on that
2 mission. Abdulraham Odeh was in the business of charity.

3 Yesterday, Mr. Jonas said would a real charity do that.
4 Would a real charity do that. May of 1996, we saw this video.
5 We watched this video together. This is when Abdulraham Odeh
6 went to Egypt and got two truck loads -- a double truck load --
7 full of supplies and went to this camp that was on the Egypt side
8 of Rafah, and we went through this together. We watched as the
9 trucks pulled into the camp. We watched the people. We watched
10 as they pulled into this UN school. This is a UN camp. And how
11 Abdul worked with the man that was there and these forms.
12 Remember the first time we talked about those forms. We now know
13 that those forms accompanied every single project they did. This
14 is how the recipients were documented. They signed these forms
15 or if they were illiterate they put their fingerprints on the
16 forms. And we did these forms. We saw many of those forms. We
17 did them at Rafah. Do these people here look like they are part
18 of a deception or is this maybe what a real charity does? These
19 people look like real recipients of charity.

20 There is Abdul Odeh doing what he did. He's in the
21 charity business and that right there is the reason why he went
22 to Rafah, to take two truck loads of food to people that needed
23 it. That's what he did. Is that what real charities do? That's
24 what he is. He went and gave real charity to these people on
25 behalf of the Holy Land Foundation, but that's what he did.

1 That's his state of mind.

2 And in February of 1997, we know that he went to Jordan
3 and did the same thing. There is two different -- On this video
4 which you all have there is two different refugee camps where he
5 gave food packages. Here they are putting their fingerprints on
6 the forms. Getting their food packages. Here is another camp
7 right here. Same thing, over and over and over again.

8 May, June, 1989, Abdulraham Odeh goes to Albania
9 because of the Kosovar crisis, the ethnic cleansing. He goes to
10 Albania and spends a month there. What does he do while he's
11 there? He works with the UN. He calls Shukri from there and
12 says, hey, there are groups here we need to avoid. There are
13 groups that are dangerous and we need to avoid. We need to stick
14 with the UN. What does a real charity do? When a real charity
15 goes into a large scale operation like this, the real charity
16 hooks up with the UN program and hooks up with the Catholic
17 Relief Services which is what Abdulraham Odeh did and brought a
18 mobile bakery, brought two ambulances and brought an entire ship
19 full of flour and all the other ingredients to make bread for
20 refugees, and when he left, when they left, they left all of that
21 stuff there as a donation. This is a far cry from that hundred
22 thousand dollar, five thousand dollar thing we heard that, of
23 course, now we know was a mistake. But I mean this wasn't
24 anywhere near Palestine. Is this a cover? Is this deception?
25 This is a relief mission, and this is what real charities do, and

1 that's what was on Abdulraham Odeh's mind.

2 They did food packages. They did the bakery. These
3 are all pictures that are in evidence. These are the recipients
4 of the charity. This is what Abdul Odeh did. I can only guess
5 what those men in that picture have been through, and when they
6 get finished with it what they see is Abdul Odeh giving them some
7 relief.

8 February 9, 1991, Odeh worked for months to try to get
9 this pantry together. We heard from Natalie Suleiman that he got
10 the health certificate, that he oversaw the construction.
11 Natalie helped him. He got the food. He worked with the
12 emergency food coalition. He got -- He got the volunteers. He
13 put it all together, and then he invited all the dignitaries.
14 And in that picture there is two mayors. There is an assistant
15 to a mayor. Also came that day was an aid to a congressman. Of
16 course, there was El-Mezain and Abdulraham Odeh. And this was
17 his baby. This food pantry that was supposed to feed over a
18 hundred people a month.

19 This is what Abdulraham Odeh did. This is real
20 charity. This is not a cover for something. This is what Odeh
21 was about. I'm not very far from winding up. I want to talk to
22 you a little bit longer about the state of mind because state of
23 mind -- You know the evidence of a person's state of mind comes
24 from basically any source. You know you walk a fine line when
25 you start talking about the First Amendment. But what other

1 evidence do we have -- the evidence of state of mind of
2 Abdulrahman Odeh? How about all of those pictures that Natalie
3 Suleiman talked to us about. Those were projects that were done
4 by the Holy Land Foundation, those pictures, those photographs
5 she said were all up on the walls down in the Holy Land
6 Foundation down in Richardson. Those exact same photographs are
7 the kinds of photographs that were on that booth that Abdul set
8 up at the conventions. Those exact same photographs were in the
9 projects that Abdul was supposed to show people to try to get
10 donations. Those are the pictures. That is the face of Holy
11 Land Foundation that Abdulrahman Odeh saw. That's it. I
12 challenge you to look at those pictures and find anywhere where
13 there is a Holy Land Foundation symbol and they put their symbol
14 everywhere. The business of charity is like that. You
15 self-promote. Look for one where there is HAMAS something or
16 another and a Holy Land Foundation logo. And you are not going
17 to find it. And we put as many of those pictures in evidence as
18 we could. You are not going to find it, and this stuff that was
19 collected by the IDF in 2002, 2003 and 2004. Abdulrahman Odeh
20 never saw any of that.

21 THE COURT: Mr. Westfall, you have ten minutes
22 remaining.

23 MR. WESTFALL: He never saw any of that. What he got
24 was pictures of the projects and things like that. Finally, when
25 he had this opening ceremony, Jim Lanso was the head of the food

1 coalition the emergency food coalition, and Jim Lanso came to
2 this opening ceremony, and I want to show you a short piece of
3 video tape that you have seen before but not this part. Very
4 short. What I want you to do is see what Jim Lanso has to say
5 about Abdulraham Odeh.

6 (Tape played)

7 MR. WESTFALL: Look at Abdulraham Odeh through this
8 man's eyes. What does this man see? This man sees another
9 person just like him that's in the business of helping other
10 people which is what Abdulraham Odeh did. Look at the pride on
11 Odeh's face. Evidence of such a convincing character that you
12 would not hesitate to act upon it and act upon it in the most
13 important of your own affairs. Is there a reasonable doubt?
14 There is. Abdulraham Odeh wasn't in the terrorist business. He
15 was in the helping business. It's what he did. It's what he
16 did. You don't go to all of these far flung places as a ruse.
17 You don't do that. He was doing charity. He was helping people,
18 and Ladies and Gentlemen, this is an important case for me as it
19 is for you and vitally important for Abdulraham Odeh. Thank you
20 so much for your service, and I pray that you acquit Abdulraham
21 Odeh because he's innocent. Thank you.

22 THE COURT: Ladies and Gentlemen, as I announced
23 earlier today, this will conclude our trial day. For tomorrow, I
24 expect that we will have a full day in that we still have two
25 counsel to present argument, and if they use the full amount of

1 time that has been allocated to them, that will consume all of
2 our morning session and into the afternoon, and then I must give
3 you my instructions about the law, and there will probably be
4 some time after that I hope for you to begin deliberations.
5 While we're apart this evening, please continue to observe the
6 instructions I have given you regarding your conduct as jurors.
7 We'll be in recess until nine o'clock tomorrow morning.

8 (Jury out)

9 THE COURT: Counsel for the government have anything
10 this afternoon?

11 MR. JACKS: No, your Honor. We filed the proposed jury
12 instruction. It's the same as the one given to you this morning
13 and served it on Mr. Cline. So we have nothing else, your Honor.

14 THE COURT: Counsel for any of defendants have
15 anything?

16 MR. CLINE: Just on the jury instruction issue, I will
17 turn to that directly, your Honor, and get you something about,
18 say, 4:30.

19 MS. MORENO: Your Honor, I wanted to confirm how much
20 time I have. I didn't know if Mr. Westfall went into any of my
21 time.

22 THE COURT: No, he actually had some left. So you have
23 a full complement of time.

24 MS. MORENO: Thank you.

25 THE COURT: If there is nothing else, we'll be in

1 recess until nine o'clock tomorrow morning.

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 131 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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